

United States
²
Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of the PHOENIX HARDWARE
COMPANY, a Corporation, Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Appellants,

vs.

CHARLES B. CHRISTY, as Trustee of the Estate
of PHOENIX HARDWARE COMPANY,
a Corporation, Bankrupt,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
District of Arizona.

Filed

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F. D. Monckton,

Clerk.

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*In the District Court of the United States for the
District of Arizona.*

In the Matter of PHOENIX HARDWARE COM-
PANY, Bankrupt.

**Petition for an Order Directing the Trustee to Make
an Assessment and Call upon the Unpaid Sub-
scriptions to the Stock of the Said Bankrupt for
the Purpose of Paying Its Debts.**

To FRED A. LARSON, Referee in Bankruptcy,
Phoenix, Arizona.

Your petitioner, Charles B. Christy, Trustee of the
Estate of Phoenix Hardware Company, a corpora-
tion, bankrupt, respectfully shows:

I.

That the said Phoenix Hardware Company, bank-
rupt, was duly incorporated under *and virtue* of
the laws of the Territory, now State, of Arizona,
during the month of March, 1907, with a capital
stock of Fifty Thousand (\$50,000) Dollars, divided
into Five Hundred (500) shares of the par value of
One Hundred (\$100) Dollars each, and its principal
place of transacting business was fixed by its articles
of incorporation at the City of Phoenix, Maricopa
County, Arizona, and hence forward and until the
time hereinafter mentioned conducted and carried
on a general hardware and implement business in
said City of Phoenix, Arizona.

II.

That by the terms of the articles of incorporation
under which said corporation, bankrupt, was in-
corporated, it is provided that all subscriptions for

the capital stock of said corporation shall be paid into the said corporation within thirty (30) days from the time such stock is subscribed for. [1*]

III.

That by the terms of said articles of incorporation it is provided that the affairs of the said corporation shall be conducted by a board of directors, consisting of three (3) stockholders, who shall be elected annually by the stockholders from among their number at the annual election thereof, and until the first annual meeting of said stockholders, J. B. Long, J. W. Long and M. West were designated and appointed the Board of Directors of said corporation.

IV.

That said articles of incorporation further provided that the officers of said corporation shall be a President, Secretary and Treasurer, and at a meeting of the said Board of Directors held on the 19th day of March, 1907, the said J. B. Long was elected President of the said corporation and the said J. W. Long was elected its Secretary and Treasurer, and at said meeting one W. J. Kingsbury was appointed the legal agent of said corporation.

V.

That since the incorporation of said corporation as hereinbefore set forth no annual or special stockholders' meeting whatever has ever been held by the stockholders of *said corporation and no annual or special stockholders of said corporation and no annual or special stockholders' meeting whatever has ever been called by the officers or stockholders of*

said corporation and that the said J. B. Long, J. W. Long and M. West ever since the incorporation of said corporation have been and now are the duly appointed, qualified and acting Board of Directors of said corporation.

VI.

That since the said 19th day of March, 1907, the said Board of Directors have held no meeting whatever, and [2] ever since the said 19th day of March, 1907, the officers so elected as aforesaid on the said last mentioned date have been and now are the duly elected, qualified and acting officers of said corporation.

VII.

That notwithstanding the articles of incorporation of said corporation authorized and empowered the Board of Directors of said corporation to establish all needful by-laws, rules and regulations for the management of its affairs and officers, the said Board of Directors has wholly failed to make or establish any by-laws, rules or regulations whatever for the management of its affairs and officers, or otherwise.

VIII.

That on the 19th day of March, 1907, the said M. West subscribed for Two Hundred and Fifty (250) shares of the capital stock of said corporation and paid to said corporation thereon the sum of Five Thousand (\$5,000) Dollars and no more, and that said M. West has not since said last mentioned date, nor at any time or at all paid or caused to be paid to said corporation any further sum or sums whatever for and on account of said stock so subscribed for as

aforesaid, and that said corporation made, issued and delivered to said M. West certificate for said Two Hundred and Fifty (250) shares of its said capital stock as for full paid shares.

That on the 19th day of March, 1907, the said J. B. Long subscribed for One Hundred and Thirty (130) shares of the capital stock of said corporation and paid to said corporation thereon the sum of Twenty-six Hundred (\$2600) Dollars and no more, and that the said J. B. Long has not since said last mentioned date *not* at any time or at all [3] paid or caused to be paid to said corporation any further sum or sums whatever for and on account of said stock so subscribed for as aforesaid, and that said corporation made, issued and delivered to said J. B. Long its certificate for said One Hundred and Thirty (130) shares of its said capital stock as full paid shares.

That on the 19th day of March, 1907, the said J. W. Long subscribed for Eighty (80) shares of the capital stock of said corporation and paid to said corporation thereon the sum of Sixteen Hundred (\$1600) Dollars and no more, and that the said J. W. Long has not since said last mentioned date nor at any time or at all paid or caused to be paid to said corporation any further sum or sums whatever for and on account of said stock so subscribed for as aforesaid and that said corporation made, issued and delivered to said J. W. Long its certificate for said Eighty (80) shares of its said *capital* stock as for full paid shares.

That on the 19th day of March, 1907, one Margaret

M. Long subscribed for Forth (40) shares of the *Capital* stock of said corporation and paid to said corporation thereon the sum of Eight Hundred (\$800) Dollars and no more, and that the said Margaret M. Long has not since said last mentioned date nor at any time or at all paid or caused to be paid to said corporation any further sum or sums whatever for and on account of said stock so subscribed for as aforesaid and that said corporation made, issued and delivered to said Margaret M. Long its certificate for said Forty (40) shares of the said *capital* stock as for full-paid shares.

IX.

That by agreement made at the date of the several issues of stock as hereinbefore set forth the amounts paid thereon by each of said stock purchasers were credited to [4] said subscribers and the balance unpaid of the face value thereof was credited by discount and the stock account between the said bankrupt corporation and said subscribers was balanced by such discount.

X.

That the officers, managers and agents of said corporation, bankrupt, represented to the public that all its capital stock had been subscribed for and had been or would be paid in full, and relying on such representations the public, and especially the creditors of said corporation, extended credit to said corporation in the amounts and to the extent as hereinafter set forth.

XI.

That thereafter, to wit, on the 24th day of Octo-

ber, 1914, the said Phoenix Hardware Company was by a decree of the above-named court duly adjudged a bankrupt, and that on the 16th day of November, 1914, your petitioner, Charles B. Christy, was duly elected and appointed Trustee of the Estate of said Phoenix Hardware Company, bankrupt, and on the 17th day of November, 1914, your petitioner accepted said trust and qualified as such trustee on November 20, 1914, and hence forward has been and still is the duly appointed, qualified and acting trustee of said estate.

XII.

That at the date of said adjudication in bankruptcy the affairs of said corporation were in a very embarrassed and complicated condition and much time has been necessarily consumed and considerable expense incurred in the proper administration of the affairs of said bankrupt estate, and that all of the property and assets of said bankrupt on hand at the date of adjudication in bankruptcy and all property [5] and assets of said bankrupt that has come into the hands of your petitioner since said adjudication has been disposed of as rapidly as seemed conducive to the interests of all concerned.

XIII.

That the total amount of claims filed and allowed against the said estate amount to the sum of Fifty-eight Hundred and Thirty-five (\$5,835) Dollars, and the statutory time for filing claims against said estate has long since expired, and your petitioner has now in his hands a balance applicable to the payment of these claims, amounting to the sum of Three

Hundred and Seventy-seven and 94/100 (\$377.94) Dollars, said balance being also subject to the payment of costs, disbursements, commissions and counsel fees.

XIV.

That the only remaining assets of said estate are certain book accounts, which are not collectable, and the unpaid subscriptions to the stock of said bankrupt, as hereinbefore set forth, and which is yet due and unpaid on the said stock held and owned by said stockholders, which amounts to the sum of *Fort* Thousand (\$40,000.00) Dollars, and that the amount of the liabilities of the said bankrupt estate over and above the assets now in the hands of your petitioner is Five Thousand Four Hundred and Fifty-seven and 06/100 (\$5,457.06) Dollars.

XV.

Your petitioner further avers that an assessment of thirty-four (34%) per cent upon the par value of each share of stock in said company if credited with the amount paid by each stockholder heretofore would equalize the burden upon the said stockholders and also bring into the hands of your petitioner a sufficient amount to pay the debts of [6] the said bankrupt estate and the costs and necessary expenses incurred in the prosecution of this action.

XVI.

Your petitioner further avers, that he is informed and believes and so alleges the fact to be that certain of the subscribers to the capital stock of said corporation, to wit, the said J. B. Long, the said J. W. Long and the said Margaret M. Long, are and

each of them is insolvent and unable to respond in damages or to an order of this Court requiring all of the stockholders of said corporation to pay over to your petitioner a sufficient amount to pay the creditors thereof.

WHEREFORE, your petitioner prays, that an order be made by this Honorable Court directing the said stockholders hereinbefore named to be and appear before this Honorable Court on a day and place to be fixed by this Court to show cause, if any they have, why an order of this Court should not be made requiring your petitioner to make an assessment and call upon all the stock of said corporation for the purpose of paying the debts of said corporation, bankrupt, and the expense of prosecuting this action as hereinbefore set forth.

2d. That upon such hearing this Honorable Court make an order directing your petitioner to make an assessment and call upon the stock of said corporation, bankrupt, of thirty-four (34%) per cent upon the par value of each share of the stock of said corporation, bankrupt, and that each stockholder be credited with the amount heretofore paid by him thereon and that the sum so assessed shall be paid to your petitioner, Trustee of said bankrupt estate, on or before a day certain to be fixed by this Honorable Court, and in [7] default of payment of said sum that he be directed to sue for and collect the same.

3d. That the agreement between the said corporation and its stockholders to the effect that they, the said stockholders, would not be required to make

any further payment on their said stock be set aside as in fraud of creditors.

4th. That the said stockholders J. B. Long, J. W. Long and Margaret M. Long are and each of them is insolvent and unable to respond to an order of this Court requiring the stockholders of said corporation to pay over to your petitioner a sufficient amount of money to pay the debts of said corporation, and that said stockholder M. West be required to pay over to your petitioner a sufficient amount to pay the debts of said corporation.

CHARLES B. CHRISTY,
Trustee.

J. C. FOREST,
Attorney for Trustee.

State of Arizona,
County of Maricopa,—ss.

Charles B. Christy, being duly sworn, deposes and says that he is the petitioner above named, that he has read the above and foregoing petition, knows the contents thereof and that the matters and things therein set forth are true in substance and in fact, except those matters alleged upon information and belief and as to those matters [8] he believes it to be true.

CHARLES B. CHRISTY.

Subscribed and sworn to before me this 25th day of October, 1915.

FRED A. LARSON,
Referee in Bankruptcy. [9]

[Endorsements]: M. 34. In the District Court of the United States for the District of Arizona. In

the Matter of Phoenix Hardware Company, Bankrupt. Petition for an Order Directing the Trustee to Make an Assessment and Call upon the Unpaid Subscriptions to the Stock of the Said Bankrupt for the Purpose of Paying Its Debts. Filed Oct. 25, 1915. Fred A. Larson, Referee. [10]

*In the District Court of the United States for the
District of Arizona.*

In the Matter of PHOENIX HARDWARE COMPANY,

Bankrupt.

Reply to Respondents to Order to Show Cause.

Come now J. B. Long, Margaret M. Long and M. West, by W. J. Kingsbury and Struckmeyer and Jenckes, their attorneys, and replying to the petition of Charles B. Christy, trustee in bankruptcy, for an order directing the trustee to make an assessment and call upon the unpaid subscriptions to the stock of the Proenix Hardware Company, bankrupt, for the purpose of paying its debts, respectfully show as follows:

I.

Respondents demur to the petition on the ground that said petition does not state facts sufficient to authorize this Court to levy an assessment upon the capital stock of said Phoenix Hardware Company belonging to respondents.

WHEREFORE respondents pray that the order of this Court requiring respondents to show cause why such assessment should not be levied be vacated

and the petition dismissed.

II.

Further answering respondents interpose their plea in bar to said petition on the ground that said petition on its face shows that the assessment upon the said capital stock of the Phoenix Hardware Company owned by respondents is barred by the statute of limitations of the State of Arizona, to wit, paragraphs 711 and 714, Revised Statutes, Arizona, 1913.

WHEREFORE respondents pray that the order of this Court requiring respondents to show cause why such assessment should not be levied be vacated and the petition dismissed. [11]

III.

And should the above demurrer and plea in bar be overruled by the Court the respondents further replying to said petition admit the allegations contained in paragraphs I, II, III, IV, V, and XI, and deny each and every other allegation in said petition contained.

IV.

Further answering, respondents allege that they acquired the number of shares of capital stock of said Phoenix Hardware Company owned by each of them by the sale to said Phoenix Hardware Company of a certain stock of merchandise of the value of Twenty Thousand Dollars; that respondents, nor any of them, did not subscribe for any number of shares of said capital stock or at all and that there is not now due to the Phoenix Hardware Company from respondents or any of them any sum whatsoever upon any unpaid subscription.

That these respondents, or any of them, have not, either as officers of said Phoenix Hardware Company or otherwise, obtained credit from anyone for goods, wares, and merchandise or money sold or advanced to said Phoenix Hardware Company upon any representation or statement that said Phoenix Hardware Company had a capital stock of Fifty Thousand Dollars fully paid up, or any capital stock or at all, and that any credit obtained by said Phoenix Hardware Company was extended solely on account of the stock of merchandise owned by said Phoenix Hardware Company and upon statements of the financial condition of the Company given from time to time to Bradstreet and Dun commercial agencies.

WHEREFORE respondents pray that the said petition be dismissed and that an order be entered herein declaring the stock of respondents in said Phoenix Hardware Company to be nonassessable.

W. J. KINGSBURY,

STRUCKMEYER & JENCKES,

Attorneys for Respondents. [12]

State of Arizona,
County of Maricopa,—ss.

J. B. Long, being first duly sworn, upon his oath deposes and says that he is one of the respondents in the above-entitled matter and makes this affidavit for and on behalf of himself and his co-respondents in said matter, to wit, J. W. Long, Margaret M. Long, and M. West; that he has read the foregoing reply to the petition of Charles B. Christy, trustee, for an order to show cause, and knows the contents thereof

and that the same is true of his own knowledge except as to such matters therein alleged on information and belief, and as to such matters he believes it to be true.

JOHN B. LONG.

Subscribed and sworn to before me this 29th day of November, 1915.

JOSEPH S. JENCKES,
Notary Public.

My commission expires February 16, 1916. [13]

[Endorsements]: M. 41. No. ——. In the United States District Court in and for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt. Reply of Respondents to Order to Show Cause. Filed Nov. 29, 1915, 2:30 P. M. Fred A. Larson, Referee. Struckmeyer & Jenckes, Attorneys for Respondents. [14]

*In the District Court of the United States for the
District of Arizona.*

In the Matter of PHOENIX HARDWARE COMPANY, Bankrupt.

**Findings of Fact and Order Directing Trustee to
Make an Assessment on Each Share of Stock.**

This matter is before the referee upon petition of trustee for an order to show cause why M. West, J. B. Long, J. W. Long and Margaret M. Long should not be assessed on each share of stock of the Phoenix Hardware Company, subscribed to by them, at the rate of 34% on the par value thereof.

An answer was filed on behalf of each and all of said respondents which (after demurring to the petition on the grounds that it did not state facts sufficient to authorize the Court to levy an assessment upon the capital stock of said Phoenix Hardware Company, belonging to respondents; and upon the further ground that the proposed assessment is barred by the statute of limitation of the State of Arizona) alleges in substance:

That they acquired the shares of capital stock of said Phoenix Hardware Company, owned by each of them by the sale to said Phoenix Hardware Company of a certain stock of merchandise of the value of \$20,000; that respondents did not subscribe for their capital stock at all, but they do not deny that they own the number of shares of stock hereinafter stated.

The said respondents by their answer deny that either as officers of said company or otherwise obtained credit from anyone for goods, wares and merchandise or money sold or advanced to said Phoenix Hardware Company upon any representation or statement that the said Phoenix Hardware Company had a capital stock of \$50,000 fully paid up.

The referee, after an argument by the attorneys for the respective parties, overruled the *demur* and thereafter, to wit, on the 14th day of December, 1915, a hearing was had before this court, J. C. Forest appearing for the trustee and Struckmeyer & Jencks and W. J. [15] Kingsbury appearing for the respondents.

Testimony, both oral and documentary, was introduced on behalf of the trustee and the respondents, and the matter having been submitted to the Court for its consideration and decision, and after due deliberation thereon, Court finds the following facts and enters the order in accordance therewith:

FINDINGS OF FACT.

The Phoenix Hardware Company, bankrupt, was organized under the laws of the Territory, now State, of Arizona, during the month of March, 1907, with a capital stock of \$50,000, divided into 500 shares of the par value of \$100 each.

The said company was adjudicated bankrupt on the 24th day of October, 1914, and on the 20th day of November, 1914, Charles B. Christy became and now is the fully elected qualified and acting trustee of the bankrupt's estate.

The total amount of claims filed, allowed and remaining unpaid against the said estate amounts to the sum of \$5,838, and the statutory time for filing claims has long since expired.

The referee estimates that the necessary costs, disbursements, commissions, and counsel fees in connection with this matter would be \$665.

At the time of the hearing the trustee had in his hands a balance of funds applicable to the payment of these claims amounting to the sum of \$377.94, said balance being also subject to the payment of costs, disbursements, commissions, and counsel fees.

The only remaining assets of this estate are certain book accounts, which are not collectible, and unpaid subscriptions to the stock of said bankrupt.

The original and only subscribers to the stock of said company, and the amount subscribed for by each, on the 19th day of March 1907, are the following:

| | |
|-----------------------|-------------|
| M. West | 250 shares, |
| J. B. Long | 130 shares, |
| J. W. Long..... | 80 shares, |
| Margaret M. Long..... | 40 shares. |

That each of said subscribers have paid on said subscription at the rate of 20% of their par value or \$20 per share, and their [16] par value of \$80 per share.

The referee further finds that the said subscribers paid for the entire capital stock of said company the sum of \$10,000, and with said sum the said Phoenix Hardware Company, by and through its duly authorized officers and agents, purchased a stock of goods from the Arizona Hardware & Vehicle Company and paid therefore the sum of \$10,000.

That no part of the 80% of the par value of said stock or \$80 per share has ever been paid into the treasury of the said Phoenix Hardware Company bankrupt, by said subscribers or any or either of them or by anyone for them, but by agreement made at the day of the subscriptions the amounts paid thereon, by each of said subscribers were credited to each of said subscribers and the balance unpaid of the par value thereof was, in effect, credited by discount and the stock account between the said bankrupt corporation and said subscribers was balanced by such discount. *The* That the facts herein set forth was in effect a representation to the public

by the officers, managers, and agents of said corporation bankrupt, that all its capital stock had been subscribed for, and had been paid in full.

That at the time of the organization of said company its articles of incorporation designated J. B. Long, J. W. Long and M. West the Board of Directors of said corporation, and that ever since the said date they have continued to be and now are the Board of Directors of said corporation bankrupt.

That on the 19th day of March, 1907, the said Board of Directors elected the following named persons as the officers of said corporation, to wit:

J. B. Long.....President

J. W. Long.....Secretary-Treasurer

and W. J. Kingsburry was appointed the legal agent of said corporation, and that said last-named parties are still the duly elected, qualified and acting officers of said corporation bankrupt.

The referee further finds that said subscribers for the stock of said company are liable to the trustee of said bankrupt estate for the unpaid amounts on such subscriptions, or so much thereof as [17] may be necessary to pay the debts of the bankrupt estate, and that an assessment of 33% upon the par value of each share of stock of said Phoenix Hardware Company bankrupt owed by each of said subscribers, if credited with the amount heretofore paid thereon by each of said stockholders, would equalize the burden upon the said stockholders and also bring into the hands of the trustee of said estate a sufficient amount to pay the debts of the said bankrupt estate

and the necessary costs, disbursements, expenses, and counsel fees in the prosecution of this proceeding.

ORDER.

And now, to wit, this 15th day of March, 1916, on the petition of Charles B. Christy, the trustee in bankruptcy of the estate of said bankrupt, and on the order to show cause dated November 3, 1915, signed by Fred A. Larson, referee in bankruptcy, why M. West, J. B. Long, J. W. Long and Margaret M. Long should not be assessed at the rate of 34% of the par value on each share of stock of the said bankrupt company, subscribed to by them, and it appearing that due service of said order to show cause has been made on the said M. West and that she has subscribed and not fully paid for 250 shares of stock of said bankrupt, and an answer having been filed and testimony having been taken, and after hearing J. C. Forest for the petitioner and J. S. Jencks in opposition and after due deliberation had,—

It is ordered and decreed that M. West is liable in the sum of 33% of the par value of 250 shares of the stock of said Phoenix Hardware Company subscribed for by her, less \$5,000 paid thereon, or in the sum of \$3,250, on her said subscription, to the trustee of the estate of said Phoenix Hardware Company, in said sum, and that she make payment thereof to Charles B. Christy, trustee, in bankruptcy of Phoenix Hardware Company, bankrupt, at Phoenix, Arizona, within 20 days from the date of this order, and on or before the 5th day of April, 1916, said subscription when paid and collected to become a part of the assets of the said bankrupt estate, and

to be accounted for and disbursed under the orders of this court.

In default of such payment Chas. B. Christy, trustee of the estate of said bankrupt, is hereby authorized and directed to institute such proceedings against said M. West as are necessary to recover the said [18] sum due by her on said stock either at law or in equity.

FRED A. LARSON,
Referee.

ORDER.

And now, to wit, this 15th day of March, 1916, on the petition of Charles B. Christy, the trustee in bankruptcy of the estate of said bankrupt, and on the order to show cause dated November 3, 1915, signed by Fred A. Larson, referee in bankruptcy, why M. West, J. B. Long, J. W. Long, and Margaret M. Long should not be assessed at the rate of 34% of the par value on each share of stock of the said bankrupt company, subscribed to by them, and it appearing that due service of said order to show cause has been made on the said J. B. Long, and that he has subscribed and not fully paid for 130 shares of stock of said bankrupt, and an answer having been filed and testimony having been taken, and after hearing J. C. Forest for the petitioner and J. S. Jencks in opposition, and after due deliberation had,—

It is ordered and decreed that J. B. Long is liable in the sum of 33% of the par value of 130 shares of the stock of said Phoenix Hardware Company subscribed for by him, less \$2,600, paid thereon, or in

the sum of \$1,690, on his said subscription, to the trustee of the estate of said Phoenix Hardware Company, in said sum, and that he make payment thereof to Charles B. Christy, trustee in bankruptcy of Phoenix Hardware Company, bankrupt, at Phoenix, Arizona, within 20 days from the date of this order, and on or before the 5th day of April, 1916, said subscription when paid and collected to become a part of the assets of the said bankrupt estate, and to be accounted for and disbursed under the orders of this Court. In default of such payment Chas. B. Christy, trustee of the estate of said bankrupt, is hereby authorized and directed to institute such proceedings against said J. B. Long as are necessary to recover the said sum due by him on said stock either at law or in equity.

FRED A. LARSON,
Referee. [19]

ORDER.

And now, to wit, this 15th day of March, 1916, on the petition of Charles B. Christy, the trustee in bankruptcy of the estate of said bankrupt, and on the order to show cause dated November 3d, 1915, signed by Fred A. Larson, referee in bankruptcy, why M. West, J. B. Long, J. W. Long, and Margaret M. Long should not be assessed at the rate of 34% of the par value on each share of stock of the said bankrupt company, subscribed to by them, and it appearing that due service of said order to show cause has been made on the said J. W. Long, and that he has subscribed and not fully paid for 80 shares of stock of said bankrupt, and an answer

having been filed and testimony having been taken, and after hearing J. C. Forest for the petitioner and J. S. Jencks in opposition and after due deliberation had,—

It is ordered and decreed that J. W. Long is liable in the sum of 33% of the par value of 80 shares of the stock of said Phoenix Hardware Company, subscribed for by him, less \$1,600, paid thereon, or in the sum of \$1,040, on his said subscription, to the trustee of the estate of said Phoenix Hardware Company, in said sum, and that he make payment thereof to Charles B. Christy, trustee in bankruptcy of Phoenix Hardware Company, bankrupt, at Phoenix, Arizona, within 20 days from the date of this order, and on or before the 5th day of April, 1916, said subscription when paid and collected to become a part of the assets of the said bankrupt estate, and to be accounted for and disbursed under the orders of this court.

In default of such payment Chas. B. Christy, trustee of the estate of said bankrupt, is hereby authorized and directed to institute such proceedings against said J. W. Long as are necessary to recover the said sum due by him on said stock either at law or in equity.

FRED A. LARSON,
Referee.

ORDER.

And now, to wit, this 15th day of March, 1916, on the petition of Charles B. Christy, the trustee in bankruptcy of the estate of said bankrupt, and on the order to show cause dated November 3d, 1915,

signed by Fred A. Larson, referee in bankruptcy, why M. West, J. B. Long, J. W. Long and Margaret M. Long should not be assessed [20] at the rate of 34% of the par value on each share of stock of the said bankrupt company, subscribed to by them, and it appearing that due service of said order to show cause has been made on the said Margaret M. Long, and that she has subscribed and not fully paid for 40 shares of stock of said bankrupt, and an answer having been filed and testimony having been taken, and after hearing J. C. Forest for the petitioner and J. S. Jencks in opposition, and after due deliberation had,—

It is ordered and decreed that Margaret M. Long is liable in the sum of 33% of the par value of 40 shares of the stock of said Phoenix Hardware Company subscribed for by her, less \$800, paid thereon, or in the sum of \$520, on her said subscription, to the trustee of the estate of said Phoenix Hardware Company, in said sum, and that she make payment thereof to Charles B. Christy, trustee in bankruptcy of Phoenix Hardware Company, bankrupt, at Phoenix, Arizona, within 20 days from the date of this order, and on or before the 5th day of April, 1916, said subscription when paid and collected to become a part of the assets of the said bankrupt estate, and to be accounted for and disbursed under the orders of this Court.

In default of such payment Chas. B. Christy, trustee of the estate of said bankrupt, is hereby authorized and directed to institute such proceedings against said J. W. Long as are necessary to recover

the said sum due by him on said stock either at law or in equity.

FRED A. LARSON,
Referee. [21]

[Endorsements]: No. —. M. '43. In the District Court of the United States for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt. Findings of Fact and Order Directing Trustee to Make an Assessment on Each Share of Stock. Filed March 15, 1916. Fred A. Larson, Referee. [22]

*In the District Court of the United States for the
District of Arizona.*

Before FRED A. LARSON, Esq., Referee in
Bankruptcy.

In the Matter of PHOENIX HARDWARE COM-
PANY, a Corporation,
Bankrupt.

Testimony.

BE IT REMEMBERED that pursuant to notice, the hearing upon the petition of the Trustee, praying for an order directing the Trustee to levy an assessment upon the unpaid subscriptions to the capital stock of the Phoenix Hardware Company, the above-named bankrupt, came on to be heard before Fred A. Larson, Esq., Referee in Bankruptcy, at the City of Phoenix, Maricopa County, State of Arizona, on the 14th day of December, 1915, at eleven o'clock A. M.

APPEARANCES:

J. C. FOREST, Esq., for the Trustee.

W. J. KINGSBURY, Esq., and JOSEPH S. JENCKES, Esq., for the Respondents.

RAYMOND ALLEE was duly sworn as reporter, truly and correctly to take down in shorthand and transcribe into longhand the testimony adduced and proceedings had at the hearing; and

Testimony of J. B. Long, for the Trustee.

Thereupon [23] J. B. LONG, being called as a witness and first duly sworn, testified as follows:

Direct Examination by Mr. FOREST.

Mr. FOREST.—Shall we proceed? Are you ready to go ahead?

Mr. JENCKES.—I think, before we proceed, I will ask your Honor to enter an objection on the part of the respondents to the introduction of any evidence in support of the allegations of the petition, merely by way of demurrer. The general demurrer having been overruled, we now object to the introduction of any evidence in support of the allegations of the petition on the ground that the petition does not state facts sufficient to warrant the Referee in levying any assessment against the stock of these respondents.

The REFEREE.—Overrule the objection.

Mr. FOREST.—Q. Your name is J. B. Long?

A. Yes, sir.

Q. You are acquainted with the corporation known as the Phoenix Hardware Company? A. Yes, sir.

Q. And that is the same company that has been

(Testimony of J. B. Long.)

adjudged a bankrupt? A. Yes, sir.

Q. What official position did you hold in that company, if any, Mr. Long? A. President.

Q. Were you also a director in the company?

A. Yes, sir. [24]

Q. I hand you here what purports to be a certified copy of the articles of incorporation of the Phoenix Hardware Company, now a bankrupt. Will you state, Mr. Long, if these are the articles?

A. The fact that this is certified by the Corporation Commission—it is probably correct. That makes it correct.

Mr. JENCKES.—I suppose they are the articles.

Mr. FOREST.—Yes; it is certified by the Commission.

Mr. JENCKES.—No; we have no objection.

Mr. FOREST.—I ask that it be introduced in evidence as Trustee's Exhibit No. 1.

(Copy of articles of incorporation, certified by the Corporation Commission, was received in evidence by the Referee and marked "Trustee's Exhibit No. I.")

Q. Upon the filing of the articles of incorporation was there a meeting held by you and associates, in which a board of directors was elected?

A. Yes, sir.

Q. They were also named in the articles of incorporation, were they? A. I think so.

Q. On the 19th of March, 1907, did the Board of Directors hold a meeting? A. Yes, sir.

Q. I submit here what purports to be the minutes

(Testimony of J. B. Long.)

of the first meeting of the Board of Directors of the Phoenix Hardware Company, held in the office of the company, at Phoenix, Arizona, March 19th, 1907, and ask if you are [25] familiar with that.

A. It is all correct.

Mr. FOREST.—I offer this in evidence as Trustee's Exhibit No. 2.

The REFEREE.—Any objection, Mr. Jenckes?

Mr. JENCKES.—You have examined that, Mr. Kingsbury? No objection to it.

Mr. KINGSBURY.—Yes.

Mr. JENCKES.—No objection to it.

(Copy of minutes of first meeting of Board of Directors of Phoenix Hardware Company was received in evidence by the Referee and marked "Trustee's Exhibit No. 2.")

Mr. FOREST.—Q. At that meeting, Mr. Long, you, yourself, Mr. J. B. Long, were elected president of the company? A. Yes, sir.

Q. And W. J. Kingsbury was appointed statutory agent? A. Yes, sir.

Mr. JENCKES.—We object to these questions because the instrument is the best evidence.

Mr. FOREST.—That is true, but I am getting these names for the purpose of other questions.

Mr. JENCKES.—Yes; but merely for the purpose of shortening up the record—

The REFEREE.—Those questions are to be connected with others, Mr. Forest?

Mr. FOREST.—Yes; that is the purpose.

Q. And who was elected secretary?

(Testimony of J. B. Long.)

A. J. W. Long. [26]

Q. And treasurer? A. J. W. Long.

Q. And that constituted all the officers that were elected? A. Yes, sir.

Q. Since that time, March 19th, 1907, has the Board of Directors ever held a meeting?

A. Yes, sir.

Q. Have you a minute entry of it?

A. I don't know of any in existence. We had a great many meetings.

Q. Formal or informal? A. Informal.

Q. Was there any record kept of those meetings, Mr. Long? A. I think not.

Q. If so, you have no such records now?

A. We have none; no.

Q. And you know of no such records?

A. No. There was one or two instances where formal meetings were held, and records kept, and the minutes taken; but as to the whereabouts of those minutes, I don't know.

Q. Let me ask you, to cut it short, was there ever any stockholders' meeting?

A. Nothing different.

Q. From what is disclosed by this exhibit No. 2? Nothing except what is disclosed by Trustee's Exhibit No. 2?

A. As I said before, there were one or two formal [27] meetings held.

Q. That was by the Board of Directors?

A. By the Board of Directors.

Q. Now, you say there was no stockholders' meet-

(Testimony of J. B. Long.)

ings except such as are disclosed by exhibit No. 2 which we have put in evidence; is that correct?

A. I think that is correct.

Q. Now, Mr. Long, the Board of Directors as they appear in the articles of incorporation are still the Board of Directors of that corporation, are they not? There never has been any new board elected since the organization of the company?

A. There never has been any change in the Board of Directors.

Q. And the officers who were elected at the meeting disclosed by Trustee's Exhibit No. 2 are the same officers now as they were then; and they have continued as officers from the time of the organization to the present time? A. That is correct.

Q. You testified before the Referee on a former occasion, did you not, Mr. Long? A. Yes, sir.

Q. Upon the organization of the company, what, if any, assets did the company take over?

A. Well, upon the organization of the company, they took over a stock of merchandise.

Q. Formerly belonging to whom?

A. Well, belonging at that time to J. B. Long and [28] M. West—formerly belonging to the Arizona Hardware and Vehicle Company.

Q. That stock of goods had been taken over by J. B. Long and M. West? A. Yes.

Q. Now, that was the stock of goods, then, that was taken over by the Phoenix Hardware Company from J. B. Long and M. West? A. Yes, sir.

Q. When was that taken over with reference to the

(Testimony of J. B. Long.)

date of the organization of the company?

Q. On that date.

Mr. JENCKES.—Q. What date was that?

A. March 19th, 1907.

Mr. FOREST.—Q. What transfer was made to the company by M. West and J. B. Long?

A. I don't remember whether there was a bill of sale executed or not; but my recollection is that it was simply a verbal turn—over of the stock of merchandise.

Q. That is to say, if I understand correctly, you turned over the possession of the stock of goods to the Phoenix Hardware Company?

A. To the Phoenix Hardware Company.

Q. The Phoenix Hardware Company, then, if I understand correctly, purchased this stock of goods from yourself and M. West? A. Yes, sir.

Q. What was the consideration paid for that stock [29] of goods?

Mr. JENCKES.—Object to that, if your Honor please, as immaterial, irrelevant and incompetent.

Mr. FOREST.—It is the very gist of the case.

Mr. JENCKES.—The value of the stock of merchandise—they may have bought it for a very small amount.

Mr. FOREST.—It will show exactly what the price was that they paid for that stock of goods.

Mr. JENCKES.—It is not what they paid for it. It is the value of it.

Mr. FOREST.—It is what the Phoenix Hardware Company paid for it.

(Testimony of J. B. Long.)

Mr. JENCKES.—I thought you were asking what they paid for it. I withdraw the objection if that is the question. I did not understand the question.

The REFEREE.—Answer the question.

Mr. JENCKES.—Let us have the question read.

(Question read by the reporter: “What was the consideration paid for that stock of goods?”)

Mr. JENCKES.—We object to the question as indefinite.

The REFEREE.—What do you mean? Paid by whom?

Mr. FOREST.—Read the former question.

(Former question read by the reporter.)

Mr. FOREST.—Perfectly plain, now.

A. The consideration was the stock of the Phoenix Hardware Company—the corporation stock.

Q. Now, Mr. Long, when this stock of goods was purchased by you and M. West, what was the consideration paid [30] for that, and who paid it?

Mr. JENCKES.—I object to that, if your Honor please—incompetent, irrelevant and immaterial.

Mr. FOREST.—That is the very gist of it.

Mr. JENCKES.—It don't make any difference what they paid for it.

The REFEREE.—That was prior to the Phoenix Hardware Company's taking it over?

Mr. FOREST.—That particular transaction—it came right along—one entire transaction, and shows the actual money which was paid by Long and his associates for that stock of goods, and what was said about it, and what the agreement was as to the con-

(Testimony of J. B. Long.)

sideration for that stock of goods. The mere fact that they turned over all the stock to the company does not fix the value.

Mr. JENCKES.—It is not the consideration they paid for it, but the value of it. They may have bought it at ten per cent of its value, but if it had a market value of much more, that is the question in this case—the value of the merchandise which they gave for this stock.

The REFEREE.—Mr. Forest, what I want to get clear in my mind is this; you want to know what M. West and J. B. Long paid for this before they transferred it to the Phoenix Hardware Company?

Mr. FOREST.—Yes.

The REFEREE.—What is the purpose of it?

Mr. FOREST.—To show what the consideration was that actually went into that stock of goods, for which the entire [31] stock of the corporation was issued.

The REFEREE.—Would it be the same amount of stock as the stock of merchandise?

Mr. FOREST.—That is exactly what I propose to show. I cannot answer all of those question at once.

Mr. KINGSBURY.—How far back are you going? You want to show what M. West paid for a stock of hardware that came from the Arizona Hardware and Vehicle Company. Are you going still further back and find out what the Arizona Hardware and Vehicle Company paid for it, and are you going to the wholesaler and find out what the wholesaler paid for it? If it had a value, that is all there

(Testimony of J. B. Long.)

is to it as far as the plaintiff's case is concerned. It don't make any difference what they paid for it. It is the value of the stock—the value of the merchandise they exchanged for the capital stock. That is the issue right here, and I think the Court ought to confine the testimony to that issue.

The REFEREE.—I want to see the connecting link.

Mr. FOREST.—Very well, your Honor will recall the case where, in taking over a tailor establishment, they purchased the stock of goods for \$5,000. You remember that case?

The REFEREE.—Yes.

Mr. FOREST.—They put it in the company at the value of \$25,000 and issued stock to cover that amount. Can you find a more parallel case than this? And for the purpose of showing what the purchase price was, can we not go [32] in and show what these people paid for this, and let them put in such proof as they desire for the purpose of showing the consideration that Long and West paid for this—what it actually cost them?

The REFEREE.—They afterwards transferred to the Phoenix Hardware Company—

Mr. KINGSBURY.—But the testimony is that the merchandise was bought before the transfer was made.

The REFEREE.—For the present, I will overrule the objection.

Mr. JENCKES.—Is it your ruling that the burden is on us to prove the actual value? They come

(Testimony of J. B. Long.)

in and make these allegations. Their allegation is that we paid a certain amount of money for this, and now they seek to show that we transferred a stock of merchandise. Now, that is absolutely immaterial to the issues. If the stock was purchased at ten cents on the dollar, it certainly had a valuation of more than ten cents on the dollar; and they had a right to turn it over at its actual value. Its actual value is the only thing that we are concerned with in this inquiry.

The REFEREE.—I agree. If there is no connecting link, I will exclude it.

Mr. JENCKES.—I cannot see anything that it will connect up with at all—to bring out that they paid much less than they turned it over to the company for.

The REFEREE.—For the present, I will overrule the objection. [33]

Mr. JENCKES.—We will note an exception to the ruling of the Court.

(Question read by the reporter: “Now, Mr. Long, when this stock of goods was purchased by you and M. West, what was the consideration paid for that, and who paid it?”)

A. The consideration was approximately \$10,000 cash, paid by J. B. Long and M. West.

Mr. FOREST.—Q. Now, what if any payment did you make, either by notes, securities or otherwise, towards the \$10,000? A. How is that?

Q. What if any payment did you make by way of notes or any other securities towards this \$10,000?

(Testimony of J. B. Long.)

Mr. JENCKES.—We object to that question.

Mr. KINGSBURY.—He said they paid \$10,000 in cash. That answers the question.

The REFEREE.—For the purpose of seeing the ultimate link, I will permit this to go in; and if I do not see the link, I will exclude it.

A. Are you asking this question to find out where I got hold of the money to pay for my portion?

Mr. FOREST.—Q. You testified upon a former occasion that you put up \$5,000 in notes?

A. That was practically true, but I did not go far enough to say for what those notes were signed.

Q. Before you explain, state where or not you did put up \$5,000 in notes.

Mr. KINGSBURY.—We object, if the Court please. The question is too indefinite. [34]

Mr. FOREST.—Will you let the witness answer?

A. I borrowed \$5,000 to pay for my portion of that stock.

Q. That is, your portion of the \$10,000?

A. My portion of the \$10,000.

Q. You borrowed \$5,000? A. Yes, sir.

Q. And you did pay in, then, \$5,000 of the \$10,000 for this stock of goods; is that correct?

A. Yes, sir; for my portion.

Q. And you gave your notes to somebody as security for that loan of \$5,000? A. Yes, sir.

Mr. KINGSBURY.—I object, if the Court please.

The REFEREE.—He has not asked where he got the \$5,000.

Mr. FOREST.—But I am going to ask.

(Testimony of J. B. Long.)

Mr. JENCKES.—You understand that our objection goes to this whole line of testimony?

The REFEREE.—Yes.

Mr. FOREST.—Now, Mr. Long, did you have some conversation with Mr. Kingsbury regarding this transaction? A. Yes, sir.

Q. Who was Mr. Kingsbury representing?

A. Well—

Q. From your understanding?

A. Mr. Kingsbury was representing parties that had made this loan.

Q. I mean with reference to yourself and M. West in [35] the transaction. I don't care about the people you borrowed the money, for the present. Who was Mr. Kingsbury representing in the transaction between yourself, M. West and the Phoenix Hardware Company?

A. Mr. Kingsbury was representing M. West.

Q. Now, did you have a conversation with Mr. Kingsbury with reference to the \$5,000 that you should put up? A. I certainly did.

Q. Yes. What was said?

Mr. JENCKES.—We object to that, if your Honor please.

Mr. FOREST.—He was representing M. West, one of the officers and a director of this company, and a stockholder.

Mr. JENCKES.—What difference does it make what conversation he had with Mr. Kingsbury, or anybody, with reference to this stock of hardware?

Mr. FOREST.—We are getting at the money.

(Testimony of J. B. Long.)

Mr. JENCKES.—What difference does it make where they got the money, if he got the money and put it up and stood responsible?

Mr. FOREST.—Because we are going to show, further, who he paid that money back to.

Mr. JENCKES.—What difference does it make to whom he paid the money?

The REFEREE.—Mr. Forest, what is your purpose? What do you intend to bring out?

Mr. FOREST.—We have alleged that this transaction was fraudulent. Now, we have the right to show the entire transactions between these people, including Mr. Kingsbury, [36] who, it is disclosed here, was representing the principal stockholder, M. West. Now, we want to show all about the whole transaction in order to show that it was fraudulent at law. No matter how honest this transaction might have been between these parties as a matter of fact, if conditions develop in law that it was fraudulent, we have a right to a decree in this case.

The REFEREE.—Overrule the objection.

Mr. JENCKES.—We except to the ruling of the Court.

Mr. FOREST.—Q. What was said to Mr. Kingsbury in that regard, concerning the \$5,000 you were to put up?

Mr. JENCKES.—Now, we enter the further objection that any communication between Mr. Long and Mr. Kingsbury was a communication between

(Testimony of J. B. Long.)

them as attorney and client, and they cannot be compelled to testify to it.

Mr. FOREST.—That don't appear to be true. That has not been disclosed. The testimony was that he was the attorney for M. West.

The REFEREE.—I understood that he said he was the agent.

Mr. JENCKES.—Well, I would like to ask Mr. Long as to that, as to whether or not Mr. Kingsbury was representing all of these parties who bought out this stock of hardware as the attorney?

A. Why, yes; he was appointed the agent of the company.

Q. The agent of the company, that is true.

A. The representative and attorney for the Phoenix Hardware Company. [37]

Mr. JENCKES.—The attorney—now, on that state of facts, we object to it.

The REFEREE.—He said he was the agent.

Mr. JENCKES.—Q. Was Mr. Kingsbury your attorney before the hardware company was organized?

A. No; he was not my attorney. He was my broker in a sense.

Mr. JENCKES.—We insist that the relation of attorney and client existed.

Mr. FOREST.—He says not.

The REFEREE.—I don't see it from the testimony of Mr. Long. He denies that he was his attorney.

Mr. JENCKES.—Now, he says he was the attorney for the Phoenix Hardware Company. He was the president of the Phoenix Hardware Company,

(Testimony of J. B. Long.)

and the relation of attorney and client must have existed between the president and the attorney of the company.

Mr. FOREST.—Now, your Honor, a corporation is an entirety of itself.

The REFEREE.—Mr. Long may answer the question.

A. Previous to the formation of the company I did not have any attorney representing me.

Mr. FOREST.—Now, we insist that he answer the last question.

The REFEREE.—He may answer.

(Question read by the reporter: “What was said to Mr. Kingsbury in that regard, concerning the \$5,000 you *were put up?*” [38])

A. I am at a loss to answer that intelligently. It would take some time to go over the entire conversation.

Mr. FOREST.—Q. What was done about the \$5,000 between yourself and Mr. Kingsbury?

A. I asked Mr. Kingsbury, as broker, if he could secure \$5,000 for me to buy one-half of that stock; and he said he thought he could; and we talked the matter over.

The REFEREE.—Q. What stock was that?

A. The stock of the Arizona Hardware and Vehicle Company, previous to the purchase by myself and M. West.

Mr. FOREST.—Q. Go ahead. What else was done?

A. And I told him at the time that if he could, I

(Testimony of J. B. Long.)

was willing to stand the commission; and that was all.

Q. Did you secure the money? A. Yes.

Q. And you paid that in as one-half of the purchase price of the stock of goods? A. Yes, sir.

Q. And the \$5,000 that Mr. Kingsbury put up for M. West paid the other \$5,000? A. Yes, sir.

Q. And that stock of goods was turned over to the company just exactly as you purchased it?

A. Yes, sir.

Q. That constituted your stock in trade at that time, did it? A. Yes, sir.

Q. That is, of the Phoenix Hardware Company?

[39] A. Yes, sir.

Q. That was all the property you had? A. Yes.

Q. Did the company owe any debts at that time?

A. No, sir.

Q. Did you subsequently pay back that \$5,000?

Mr. JENCKES.—We object to that, if your Honor please. What is the purpose of it?

Mr. FOREST.—We are going to ask to whom he paid it.

Mr. JENCKES.—What difference does it make? They transferred the stock of goods to the Phoenix Hardware Company. They got the stock of goods. What difference does it make? It is encumbering the record with a lot of stuff that don't make any difference.

The REFEREE.—I don't see the relevancy of that question. He said he paid it. I don't know

(Testimony of J. B. Long.)

where the relevancy comes in as to whether he paid it back.

Mr. FOREST.—Q. Now, upon this transaction having taken place, how many shares—I will ask you to testify from the record. You recognize this? This is the stock-book of the company, Mr. Long?

A. Yes, sir.

Q. State whether or not the stubs of the stock-book which you now have in your hands disclose correctly the number of shares issued to each individual.

Mr. JENCKES.—We object to that. The stock book is here. It is the best evidence.

Mr. FOREST.—But we want to know if it is correct. [40]

Mr. JENCKES.—First, you must introduce the book.

Mr. FOREST.—If you want to be that formal—

Mr. JENCKES.—Yes; we want to be that formal.

Mr. FOREST.—Have you any objection?

Mr. JENCKES.—Not if that is the record of the company.

Mr. FOREST.—Q. State whether or not that is the stock-book of the company, Mr. Long.

A. Yes.

Q. You say that is the stock-book?

A. Yes, sir.

Mr. FOREST.—Now, we offer it in evidence. Mr. Jenckes, have you any objection?

Mr. JENCKES.—We object to the introduction of the book on the grounds that it does not tend to prove any of the issues in the case or prove the fact

(Testimony of J. B. Long.)

of the stock subscription. The petition alleges that there were subscriptions for stock, and finally the stock was issued at a certain price. Now, they should, before they introduce the stock, show there was a subscription for the stock.

The REFEREE.—Mr. Forest, what is the purpose of introducing this in the record?

Mr. FOREST.—To show the full amount of the stock which was issued, and to whom, and how many shares each received. That is the purpose.

Mr. KINGSBURY.—If the Court please, M. West could not be bound by this stock-book, because the secretary was J. W. Long.

The REFEREE.—The president has indentified it, [41] Mr. Kingsbury.

Mr. KINGSBURY.—That is not the point. It might be the stock-book, but the officers could sit down and write stock to anybody. Do you mean to say this would make a contract between John Smith and this company, under which John Smith would be liable? There is only one way to buy stock and bind yourself, and that is by subscription. That is the first thing to introduce.

Mr. FOREST.—Do you see how ridiculous that is? Suppose no subscription was ever made.

The REFEREE.—I will admit it.

Mr. JENCKES.—I think he should first show that there was no subscription.

Mr. FOREST.—I ask that this be marked "Trustee's Exhibit No. 3."

Mr. JENCKES.—Note an exception.

(Testimony of J. B. Long.)

(Stock-book of Phoenix Hardware Company was received in evidence by the Referee and marked "Trustee's Exhibit No. 3.")

Mr. FOREST.—Q. Now, Mr. Long, you were present when an agreement in the first place was made between you and among you and your associates with reference to the issuance of stock?

Mr. JENCKES.—We object to that on the ground that there is nothing as yet to show that there was such an agreement.

The REFEREE.—I think the question embodies that.

Mr. JENCKES.—If there was such an agreement, I would [42] like to know whether it was in writing.

Mr. FOREST.—You wanted to hurry through this, but you are making it long by your objections.

Q. I will ask, Mr. Long: Was there any agreement between yourselves and among yourselves, you and your associates in this corporation,—any written agreement as to taking stock in the company?

A. No, sir.

Q. What was done? What agreement was reached among you in the first instance about the issuance of stock?

A. It was that M. West should have one-half of the stock, and myself the other one-half of the capital stock of the Phoenix Hardware Company.

Q. Was there any objection to that in the first instance by yourself?

A. In our first conversation regarding the propo-

(Testimony of J. B. Long.)

sition, when I and my associates met, I suggested that we should issue \$20,000 of the capital stock.

Q. In payment?

A. In payment for the stock of merchandise. After talking the matter over, we decided to issue all of the stock.

Q. Who suggested that you issue all of the stock?

A. Mr. Kingsbury suggested that, I think. That is my recollection.

Q. And, therefore, you did issue all of the stock?

A. Yes, sir; the stock was issued entirely.

Q. Now, I will refer to the book again, and ask you [43] to look at the stubs and state whether or not those stubs of Trustee's Exhibit No. 3 properly disclose the amount of stock issued and to whom issued.

Mr. JENCKES.—We object, if your Honor please, to the question upon the ground that it is incompetent, irrelevant and immaterial, and cannot bind *these respondent*.

The REFEREE.—Objection overruled.

Mr. JENCKES.—Exception.

A. It is all correct there, as it stands.

Mr. FOREST.—You may cross-examine.

Mr. JENCKES.—Now, if your Honor please, we desire to move to strike the testimony of Mr. Long as to the amounts paid by him and M. West for this stock of merchandise, and as to the borrowing of \$5,000 with which to pay for it.

The REFEREE.—Mr. Forest, are you through?

(Testimony of J. B. Long.)

Mr. FOREST.—Through for the present. Of course, we object to that, if your Honor please, because we will offer additional testimony.

The REFEREE.—I want to ask a question before I rule.

Q. Mr. Long, this stock that you and Mrs. M. West bought from this Vehicle Company—

A. The Arizona Hardware and Vehicle Company.

Q. For \$10,000—was that the same identical stock that you put into the Phoenix Hardware Company?

A. Yes, sir.

Q. And you put that in at a capitalization of what?

A. Without any amount stated.

Q. The stock had not deteriorated? That is, you had [44] not taken anything from it? It was the same stock, the same quality and quantity that you put into the Phoenix Hardware Company?

A. Yes, sir.

Q. When you put that into the Phoenix Hardware Company— After you put that into the Phoenix Hardware Company, was any other stock added to it? A. Yes, sir.

Q. Approximately how much?

A. Approximately, \$1,800.

Q. \$1,800.

A. \$1,800 or \$1,900—I don't remember.

Q. That made it less than \$12,000 stock that you put in the Phoenix Hardware Company, all together?

A. I don't say that. I considered this stock of

(Testimony of J. B. Long.)

merchandise that I bought from the Arizona Vehicle Company to be worth \$20,000. The inventory price of that stock, at the cost to the Arizona Hardware and Vehicle Company, including the fixtures, amounted to considerably over \$20,000.

Q. What constituted the Arizona Hardware and Vehicle Company?

A. It was a corporation. There were a great many stockholders. I could not name them. J. H. La Rue was the president.

Q. Were you one of the Arizona Vehicle Company?

A. No, sir. I was an employee of the Arizona Hardware and Vehicle Company.

Q. Then after you got all of this stock, what did [45] you capitalize the Phoenix Hardware Company for?

A. The Phoenix Hardware Company was incorporated for \$50,000.

Q. For \$50,000? A. Yes, sir.

Q. With the stock of merchandise in there, as you have enumerated?

A. There was no reference made to the value of the stock we turned over.

Q. I understand, but what I mean: You capitalized the Phoenix Hardware Company for \$50,000?

A. It was capitalized for \$50,000.

Q. You started out with this stock that you bought from the Arizona Vehicle Company?

A. Arizona Hardware and Vehicle Company.

(Testimony of J. B. Long.)

Q. And this other stock, you say, of approximately \$1,800—that was the stock you started out with with the Phoenix Hardware Company? A. Yes, sir.

The REFEREE.—I deny the motion to strike.

Mr. JENCKES.—Note and exception.

Mr. FOREST.—Q. The stock of goods that you purchased from the Arizona Hardware and Vehicle Company was an old stock of goods through which the company was in rather a strained financial condition?

A. It was not an old stock, because the company had only been in business about a year or a year and a half; but they got into deep water financially, and turned the [46] entire stock of goods over to the creditors for them to realize on.

Q. And you purchased at a compromise sale from the creditors? A. Yes, sir.

Q. And it was on this stock of goods that you purchased from the Arizona Hardware and Vehicle Company that you incorporated the Phoenix Hardware Company, was it not? You took over that stock of goods?

A. The Phoenix Hardware Company took over that stock of goods.

Q. You issued the 50,000 shares of stock on that stock of goods? A. In payment for it.

Q. The \$1,800 that you spoke about went into the company afterwards?

A. It was added to it about that time.

Q. Where did you get that \$1,800 stock?

(Testimony of J. B. Long.)

A. That was the stock of goods I owned personally, previous to that.

Q. Had you previously been in the hardware business?

A. I owned that stock of goods at that time. It was paint and glass.

Q. And you turned that into the company?

A. I turned it in with the other stock.

Q. Did you turn in that \$1,800 stock in addition to the \$5,000 which you paid?

Mr. JENCKES.—I object to that as assuming something [47] not in evidence.

Mr. FOREST.—We are going to find out.

The REFEREE.—Overrule the objection.

A. That was put in as an assigned stock, for which I was to receive a credit later on.

Mr. FOREST.—Q. Oh, you were to receive a credit on the books of the company later on?

A. Yes.

Q. Did you receive a credit? A. Yes.

Q. Then, Mr. Long, the \$1,800 stock for which you afterwards received credit had nothing to do with the \$50,000 stock issue? A. In reality, no.

The REFEREE.—Are you through?

Mr. FOREST.—Yes.

The REFEREE.—We will now adjourn until 1:30. Everybody will be back here at 1:30 P. M.

(THEREUPON, the hearing stood adjourned until the hour of 1:30 P. M., at which hour it was resumed in due form, the Referee and counsel being present.)

(Testimony of J. B. Long.)

Cross-examination by Mr. KINGSBURY.

Q. You have testified that you and M. West procured this stock of merchandise from the Arizona Hardware and Vehicle Company, and paid \$10,000 for the same, in money? A. Yes, sir.

Q. What connection did you have with the Arizona Hardware and Vehicle Company at that time?

[48]

A. Previous to the purchase I had been in the position of manager under Mr. Epstein, who represented the creditors of the Company.

Q. Were you familiar with the stock of merchandise you and M. West purchased? A. I was.

Q. State whether or not it was a perfectly clean and good stock, or was it worn.

A. The stock was clean because it was new.

Q. What was the inventory value of that stock at wholesale cost?

A. It was a little over \$20,000.

Q. What would be the retail value of the stock?

Mr. FOREST.—That is immaterial. We object to that.

Mr. KINGSBURY.—We are talking about the value. You cannot tell how the Court will look at it. M. West and Long were not in the wholesale business.

The REFEREE.—I think, Mr. Kingsbury, the wholesale value would be governing.

Mr. KINGSBURY.—I don't see how you could hold such an opinion as that.

(Testimony of J. B. Long.)

The REFEREE.—Let him answer.

Mr. FOREST.—There cannot be any purpose. We would have to go in on cross-examination to find out what it would cost the company to sell that at retail in order to get at the true value.

The REFEREE.—Answer the question.

A. Why, the retail value would be \$29,000 or \$30,000. [49]

Q. On a percentage basis, how much?

A. Approximately fifty per cent advance over the wholesale.

Q. Now, you say that this merchandise—was there any subscription to the stock of the Phoenix Hardware Company signed by anyone? A. No.

Q. Now, you testified that this stock of merchandise was exchanged to the Phoenix Hardware Company for the capital stock of the Phoenix Hardware Company? A. Yes, sir.

Q. And that the capital stock was divided equally between you and M. West? A. Yes, sir.

Q. At the time of that exchange, what was the value of the capital stock of the Phoenix Hardware Company?

Mr. FOREST.—That is objected to. The record shows that. The capital stock is shown by the articles of incorporation here.

Mr. KINGSBURY.—That is where we differ. That is the par value. I did not say anything about the par value. The par value is in evidence, but the Court knows, I suppose, as a matter of common

(Testimony of J. B. Long.)

knowledge, and will take judicial notice of the fact that there is very little stock sold at par.

Mr. FOREST.—What is it you want to prove?

Mr. KINGSBURY.—It is not of any consequence.

Mr. FOREST.—What do you want it in the record for? [50]

Mr. KINGSBURY.—You never can tell when you get in the other court.

Mr. JENCKES.—I think it is material, if your Honor please.

(Question read by the reporter: “At the time of that exchange, what was the value of the capital stock of the Phoenix Hardware Company?”)

Mr. JENCKES.—He is not asking as to the par value. He is asking as to the market value of the Phoenix Hardware Company’s stock.

Mr. FOREST.—Entirely immaterial! Absolutely immaterial!

The REFEREE.—Go ahead and answer the question.

A. Previous to the time of making the trade, it had no value, because it had no assets.

Mr. KINGSBURY.—Q. Had no subscriptions?

A. Had no subscriptions and no assets.

Q. You testified in your direct examination that the board of directors of the Phoenix Hardware Company had numerous meetings.

A. They had numerous meetings.

Q. What do you mean by that—every month or twice a month?

(Testimony of J. B. Long.)

A. Sometimes two or three times a month—sometimes it might run sixty days.

Q. Were the affairs of the company discussed at those meetings? A. Yes.

Q. That was all that was discussed? [51]

A. Yes.

Q. Did you keep any minutes? A. No, sir.

Q. Why not?

A. Because there was nobody else interested besides myself and son and you, as the representative of Mrs. West. They were the only parties.

Q. You kept minutes that you made that were lost? A. Yes; there were some minutes.

Q. There was a fire?

Mr. FOREST.—We do not like to have the attorneys suggesting all the answers.

The REFEREE.—Do not put the answer in the witness's mouth.

Mr. KINGSBURY.—Q. Were there any minutes destroyed in the fire?

Mr. FOREST.—I object as leading. You cannot suggest the answer.

Mr. JENCKES.—You can on cross-examination.

Mr. FOREST.—I withdraw the objection.

A. I could not say that they were destroyed in the fire; but we lost many papers during that fire. They were wet and all obliterated.

Mr. KINGSBURY.—Q. Now, you say that this exchange of the capital stock of the Phoenix Hardware Company for the stock of merchandise was made—the agreement to make that exchange was

(Testimony of J. B. Long.)

made on March 19th, 1907, the date of Trustee's Exhibit No. 2? [52]

A. That was March 19th, 1907.

Q. Is that right? The agreement was made on that day? A. Yes, sir.

Q. The agreement, you say, was that yourself and M. West should transfer the merchandise and take all the capital stock of the Phoenix Hardware Company? A. The capital stock.

Q. That was the agreement? A. Yes, sir.

Q. That was done? A. Yes, sir; that was done.

Mr. KINGSBURY.—I think that is all the questions I will ask on cross-examination—Wait a minute.

A. My share of the stock was distributed among members of my family. It was not all made to me, personally. Some was made to myself, some to my son, and some to my wife.

Mr. FOREST.—Q. It was distributed as the stub-books and stock certificates indicate?

A. Yes, sir.

Q. That is—

A. One hundred and *forth*, eighty—I don't remember just exactly.

Mr. KINGSBURY.—Q. Mr. Forest has stated it correctly? A. Yes, sir; that is right.

Mr. FOREST.—Is that all, gentlemen?

Redirect Examination by Mr. FOREST.

Q. Mr. Long, is it not a fact that the stock of goods and merchandise—it was fixtures and the stock of goods, [53] was it not? A. Yes, sir.

(Testimony of J. B. Long.)

Q. All went to the Hardware Company?

A. Yes, sir.

Q. Is it not a fact that that was transferred directly from the Vehicle Company to the Hardware Company by a bill of sale?

A. Not according to my recollection—I could not say as to that, positively.

Q. That is a matter of very great moment; but for the sake of straightening it out—you have probably forgotten, Mr. Long. I don't think you intended to misstate the facts, but please examine that bill of sale and see if you recall it—the first part of it, and then you can look at the signature and soon see.

A. This bill of sale is made to the Phoenix Hardware Company.

Q. By whom?

A. Arizona Hardware and Vehicle Company, by Henry Morris, president. Now, my recollection—while this was made by Henry Morris, president, I cannot see why the name of the Phoenix Hardware Company was used, because the Phoenix Hardware Company at that time had not become an institution.

Mr. JENCKES.—What is the date of it?

Mr. FOREST.—That speaks for itself.

A. The 15th day of March.

Q. At any rate, Mr. Long, the stock of goods mentioned [54] is the same stock of goods which you and Mrs West turned over to the Hardware Company? A. Yes, sir.

Q. When was the fire which destroyed certain portions of the Hardware Company's property?

(Testimony of J. B. Long.)

A. It was in August, 1912.

Mr. JENCKES.—What was that question?

Mr. FOREST.—When the fire took place.

Q. Were there ever any meetings of the board of directors after that? A. Yes, sir.

Q. Did you keep minute entries of those?

A. There was minutes made of that meeting. I don't know what became of them.

Q. You have not got them now? A. No, sir.

Q. You have seen such minutes, have you?

A. Yes, sir.

Mr. FOREST.—That is all.

The REFEREE.—Q. Part of this property that you and Mrs. M. West purchased from the Arizona Vehicle Company—did that include fixtures in addition to the stock?

A. It included the stock and fixtures on a contract.

Q. How much would you estimate the fixtures to have been worth?

A. I cannot recall how much valuation was placed on the fixtures, now, but approximately the inventory showed the fixtures at something like \$5,000. They cost that, [55] but the valuation placed on them was in the neighborhood of \$1,800 or \$1,900.

Q. That was included in that \$10,000?

A. The stock that was purchased.

Mr. FOREST.—Q. That was included in the inventory? A. Yes.

The REFEREE.—Q. So, you put the stock of fixtures in the Phoenix Hardware Company, and they went to make up part of the capitalization?

(Testimony of J. B. Long.)

A. That is what was traded to M. West and J. B. Long.

Mr. FOREST.—Q. Did you say that it invoiced something like \$20,000?

A. Something over \$20,000.

Mr. JENCKES.—Wholesale value?

Mr. FOREST.—Q. That is the way all inventories are made, Mr. Long?

The REFEREE.—That is what I want to know—goods and fixtures worth \$20,000.

A. Something over \$20,000.

Mr. FOREST.—Q. Were the goods inventoried immediately prior to the sale? A. Yes, sir.

Q. By whom?

A. By myself and other parties working for the Arizona Hardware and Vehicle Company. I was in the employ of the Arizona Hardware and Vehicle Company at the time. There were four or five people engaged in taking the inventory.

Q. Now, Mr. Long, did you not make a proposition [56] yourself to the Arizona Hardware and Vehicle Company—is that the name of that concern?

A. Yes, sir.

Q. Did you not make a proposition to them in writing, whereby you agreed to pay to them the sum of fifty-five per cent of the invoice price of the goods and \$1,500 for the fixtures, and is it not true that they accepted your proposition?

A. That is true; but in addition to the \$1,500 for fixtures, there was two or three items of tools, and so forth—aside from the fixtures.

(Testimony of J. B. Long.)

Q. I mean for the stock of goods of the Arizona Hardware and Vehicle Company—the stock of goods itself. A. That is—

Q. You made a proposition of fifty-five cents on the invoice price? A. Yes, sir.

Q. In addition to that, you offered them \$1,500 for the fixtures? A. Yes, sir.

Q. And they accepted your proposition?

A. Yes; but they did not include all of the stock. I say, there were items of tools that were not included either in the stock or in the fixtures.

Q. To whom did they belong?

A. Arizona Hardware and Vehicle Company.

Q. Were they afterwards taken over?

A. They were taken over at the same time. [57]

Q. How much were they?

A. I don't remember, but between \$200 and \$300 is my recollection.

Q. Now, you say it was \$200 or \$300. If you paid them, then, fifty-five per cent and they accepted it for the stock of goods, and \$1,500 for the fixtures, that would aggregate, would it not, an invoice of \$17,000 including the stock of goods, fixtures and all?

A. No, sir.

Q. Examine this instrument I hand you, dated Phoenix, March 15th, 1907. Is that the proposition you made to the company? You may state, Mr. Long, if that is the form of the proposition you made to the company.

A. That is the form of the proposition we made.

Q. And is this the receipt?

(Testimony of J. B. Long.)

A. Received of J. B. Long \$1,500.

Q. For the payment of what?

A. On the contract—to apply on the contract.

Mr. FOREST.—We offer this in evidence, if the court please.

Mr. JENCKES.—We have no objection to that.

Mr. FOREST.—I ask that it be filed as Trustee's Exhibit No. 4.

The REFEREE.—You want to get in the record what that is?

Mr. FOREST.—Trustee's Exhibit No. 4 is the proposition of Mr. Long to the Arizona Hardware and Vehicle Company, and receipt for the payment of \$1,500 on the contract. [58]

(Proposition of J. B. Long to the Arizona Hardware and Vehicle Company, dated March 15th, 1907, was received in evidence by the Referee and marked "Trustee's Exhibit No. 4.")

Recross-examination by Mr. JENCKES.

Q. Mr. Long, did you pay the Arizona Hardware and Vehicle Company ten thousand dollars for that stock?

A. Approximately. I got a few dollars less than \$10,000.

Q. Do you know how many dollars less?

A. Less than \$50, less than that—paid them over \$9,950, as I recollect.

Q. Regardless of this contract—whatever that may figure out—the actual money which you paid to the Arizona Hardware and Vehicle Company for that stock of fixtures and merchandise was some-

(Testimony of J. B. Long.)

thing over \$9,950? A. That is my recollection.

Q. In cash? A. Within \$5 or \$10.

Q. Not less than \$9,950? A. Not less than that.

Mr. JENCKES.—That is all.

(The witness was then excused.)

Testimony of Charles Christy, for the Trustee.

CHARLES CHRISTY, being called as a witness and first duly sworn, testified as follows:

Direct Examination by Mr. FOREST.

Q. What is your name?

A. Charles Christy. [59]

Q. Charles B.? A. Charles Bennet Christy.

Q. What official position do you hold with reference to the Phoenix Hardware Company, bankrupt?

A. I am trustee.

Q. And have been since your first appointment?

A. Since my appointment, last fall.

Mr. FOREST.—I will state to the Court, now, in order to shorten up the record, that Mr. Jenckes and I have stipulated that the bills here, or rather the claims which have been presented and allowed before his Honor, the Referee, against the Phoenix Hardware Company, bankrupt, may be introduced in evidence as a whole—in order to save a long record by introducing each separate bill, and the bills may be marked—

Mr. JENCKES.—I would suggest that we stipulate that they be considered in evidence without being actually marked. They are in the possession of the Referee, and will go up when the whole thing goes up.

(Testimony of Charles Christy.)

Mr. KINGSBURY.—You can add to the statement that it is stipulated in open court that the bills amount to so much.

Mr. FOREST.—The stenographer might take this, if it is agreeable to Mr. Jenckes: It is also stipulated by the respondents and the trustee through their respective counsel that the amount of the claims that have been presented and allowed by the Referee against the Phoenix Hardware Company, bankrupt, aggregate the sum of \$5,835.44.

Mr. JENCKES.—I assume that that is the amount of [60] the claims. . . . If the Referee and Mr. Christy know whether they are the claims—

A. Those are the claims.

Mr. FOREST.—Now, may I ask the stenographer to read the last stipulation?

(Stipulation read.)

Mr. FOREST.—And add to that: And that no part thereof has been paid.

Q. Now, Mr. Christy, when did this estate come into your hands as trustee, approximately?

A. The latter part of November, if I am not mistaken.

Q. Nineteen what? A. 1914.

Q. From whom did you receive it?

A. J. D. McCoy, who was receiver under the estate courts prior to my taking charge.

Q. How long had Mr. McCoy handled the estate prior to the time you took it?

A. I am not exactly familiar with them. The affairs of the company were thrown into state receiver-

(Testimony of Charles Christy.)

ship about the latter part of August.

Q. 1914? A. 1914.

Q. Now, Mr. Christy, did you find any unpaid bills due the company from outside sources?

A. Among the assets turned over to me were a list of accounts, due and payable, from which a number had been collected by the state receivership. [61]

Q. And when he turned the matter over to you, did he account for what he had collected?

A. He turned over his books, which accounted for such payments as had been made by the people owing; and he also accounted for all sales he had made from the stock during his management by his cash book.

Q. Now, Mr. Christy, what, if anything, did you do towards making collections of unpaid bills due the bankrupt?

A. Why, I put them in the hands of a young fellow for collection last spring, after talking with the Referee regarding it and my authority to do so, and collected the \$200. And since that time I have taken the matter up with other people, making inquiries regarding the feasibility of collection, and their replies have been to the effect that the accounts were worthless.

Mr. KINGSBURY.—We object to that. Talks between somebody else and this trustee are immaterial.

Mr. FOREST.—Simply showing his attempt to collect.

The REFEREE.—I think it is admissible to show

(Testimony of Charles Christy.)

whether or not they are collectible—whether the trustee has made any attempt to collect.

Mr. FOREST.—Q. After having collected the \$200 that you mentioned, what, if anything, did the collector do with the balance of the bills?

A. He turned them back to me, saying that it was impossible to get anything out of them.

Q. Have you a list of those unpaid bills with you?

A. Yes, sir; I have the list that was turned over [62] by the court, and I have also a list—a copy that I have used, with my own notations.

Q. Now, the instrument that you have in your hands is what?

A. It is a list of the accounts receivable of the Phoenix Hardware Company, as rendered by the State receiver upon his inventory of the Phoenix Hardware Company.

Q. Are those the bills that you have tried to collect? A. They are, sir.

Q. What inquiries have you made, if any, concerning the possibility of collecting these claims?

A. I have made inquiry of local collectors, whom I considered to be best advised on the reliability of the people in question; and I have also made inquiry of tradesmen who handled the same line of commodity as the Phoenix Hardware Company.

Q. Did you submit a list of the debtors to these people? A. Yes.

Q. Since the collector turned the accounts back to you, have you been able to get anyone to collect anything more on the debts? A. No.

(Testimony of Charles Christy.)

Q. And you have collected no more, yourself?

A. No, sir.

Q. What would you say, then, as to the prospects of collecting any of these bills?

A. I would say that, as an asset, this list of [63] accounts receivable, is worthless.

Q. What is their condition with reference to the time which they have run?

A. All open accounts—you wish a statement under the bankruptcy law? All open accounts which have been out over three years become outlawed.

Q. How long a time has any of them run?

A. Of this list of accounts receivable, totalling \$3,921.35, I find by comparison with the books of the Phoenix Hardware Company that \$1,277.24 are outlawed.

Q. Wait a minute. You mean—

A. They ceased to be collectible on or before December, 1914.

Q. That is, they have been on the books—

A. They have been on the books for three years prior to December, 1914.

Q. And what else?

A. I found that of the balance remaining \$1,802.21 were considered uncollectible and worthless by other people. I also found that \$631.81 has been collected by myself and the receiver.

Q. Wait a minute.

A. I gave the totals. I am listing what each segregation amounts to, and you will find that they cover the whole list.

(Testimony of Charles Christy.)

Q. But the aggregate sum set out here as unpaid claims in the hands of the Referee amount to \$5,835.44. Is this \$600 that you have collected—
[64].

A. No; of this \$600 I am speaking of, \$431 was collected by the state receiver and turned over to me with the bank deposit when I became trustee; and the other \$200 I collected myself. There is a collection of \$8 or \$9 that I made myself aside from the \$200.

Q. And that is all accounted for?

A. Yes, sir; that has been reported before. Then, I would say, further, that the difference as shown by the figures presented, and the total accounts receivable, do not represent collectible accounts. They represent accounts of people of whom I could learn nothing—nobody knew anything. In other words, they were probably as worthless as those we knew.

Mr. JENCKES.—Q. How much is that?

A. It would be less than \$200.

Q. That you could find—

A. That I could find no trace of.

Mr. FOREST.—What did you say that is?

A. This is a list of the accounts receivable.

Q. An exact copy? A. A verbatim copy.

Q. And was it compared with the books of the company?

A. Yes, sir; it was compared by the people who made the transfer and by myself. I made this for the purpose of giving myself a check.

(Testimony of Charles Christy.)

Mr. JENCKES.—If Mr. Christy made it himself, we have no objection on that ground.

Mr. FOREST.—We offer it as Trustee's Exhibit No. 5. [65]

Q. Being what?

A. A transcript of the accounts receivable of the Phoenix Hardware Company, as itemized by the state receiver.

Mr. JENCKES.—We have no objection to the account itself, but these notations—it is understood that these are no part of the exhibit?

A. My testimony covers that.

Mr. FOREST.—We will offer it for the purpose stated, and that is all—not that the notations on there have anything to do with it.

Mr. KINGSBURY.—It looks to me like this ought to be re-copied. All those notations on there may be considered as struck out?

Mr. JENCKES.—Just let that be substituted.

(List of accounts receivable of Phoenix Hardware Company was received in evidence by the Referee and markd "Trustee's Exhibit No. 5.")

Mr. FOREST.—You may cross-examine.

The REFEREE.—Q. Mr. Christy, you say that certain moneys were turned over to you by the state receiver? A. Yes, sir.

Q. I wish you would state whether or not it is within your knowledge that the state receiver and his attorney were first compensated by the State court? A. They certainly were.

Q. Before turning any of the money over to you?

(Testimony of Charles Christy.)

A. Yes, sir; compensation for the State court and the State receiver, as well as his attorney were paid [66] from the funds after adjudication in bankruptcy, and before they were turned over to me, amounting close to \$200, as I remember.

Cross-examination by Mr. JENCKES.

Q. Mr. Christy, you were appointed trustee the latter part of November, 1914? A. Yes, sir.

Q. And qualified at the same time?

A. I believe I did at practically the same time. I believe it was about the 24th day of November. It was the latter part of November.

Q. You immediately took over these accounts at that time?

A. No; I was not given these things until after the inventory was taken of the stock.

Q. When did you first become cognizant of the fact that \$1,277.44 had become outlawed?

A. In glancing over the books—as shown by the Phoenix Hardware books—running over the accounts to see what looked practical in it. And when I took up with the party last spring, and he reported adversely, I took occasion to go over the books myself and investigate. It would seem to endorse his ideas so thoroughly that it was a verification of his.

Q. This \$1,277.44 all became outlawed during the time of your incumbency as trustee?

A. As a matter of fact, they became outlawed prior to that time. [67]

Q. I understood you to say that they were outlawed December, 1914? A. Yes, sir.

(Testimony of Charles Christy.)

Q. Then, you mean the rest outlawed in December, 1914?

A. December items of 1914 were not placed among the items that were outlawed—at least, December, 1911, were not included among those which were outlawed; but items of November, 1911, such as there were, included among those which became outlawed prior to my being able to take action.

Q. Then, none of this stuff has become outlawed since you have been trustee?

A. All items of 1912 would naturally revert to bankruptcy.

Q. What do you mean?

A. Items of 1912 up to the present time would be beyond collection, as outlawed.

Q. How much of this \$3,921.35 has become outlawed during your incumbency as trustee?

A. The items for 1912 and December, 1912, when taking into consideration the entire month of December, this year, are \$405.73.

Q. What is the reason that no effort was made to collect and enforce the collection of those by suit?

A. Because, as you will find from my former evidence, the majority of that amount is absolutely worthless according to the opinion of people whom I referred it to.

Q. Did you ever make any other investigation, except [68] what you obtained from collectors, or inquiry as to the property which these people might have?

(Testimony of Charles Christy.)

A. I inquired at the M. and M., and was told that they were worthless.

The REFEREE.—You say M. and M. You had better state what that is.

A. Merchants and Manufacturers' Association.

Mr. JENCKES.—Q. But you made no examination of the assessment-rolls or anything of that sort?

A. No, sir; I made no examination of the assessment-rolls.

Q. So, all the information you have about it is what you got from collection agencies?

A. Yes, sir; you might say it that way—from people who would be conversant with the standing of people in the community.

Q. Did you ever consult with any of the Longs as to the collectibility of the accounts?

A. None, whatever.

Q. Ever solicit their aid in the collection?

A. None, whatever.

Q. Was there any reason for not doing so?

A. No, except this, that I thought if they were not able to collect practically \$3,000 in two years' time, they could not do so in a few months' time.

Q. That was the only reason?

A. I thought, to be perfectly frank, that they had not demonstrated their ability as collectors for the Phoenix [69] Hardware Company. Why should they show any better ability collecting for me as trustee?

Q. That was the only reason?

A. That is the only reason.

(Testimony of Charles Christy.)

Q. What is the balance now? I did not gather from your statement on direct examination what remained uncollected at the present time outside of these outlawed accounts.

A. There would be practically the difference.

Q. That is a matter of computation, however.

A. Practically—I am considering the 1912 business as being out. I am not taking that into consideration as among the outlawed accounts.

Q. 1912?

A. There would be 1911, and deducting the outlawed accounts prior to my incumbency and collections made, there is a balance of \$2,000.

Q. \$2,000?

A. Practically—approximately, \$2,000—very close to it.

Q. None of this is outlawed as yet?

A. Yes; the item I gave you before—the sum of \$400.00 would be outlawed, too—whatever I gave you.

Q. \$405.73? A. Deducting \$400,—\$1,600.

Mr. JENCKES.—I think that is all.

Mr. FOREST.—That is all.

(The witness was then excused.) [70]

Testimony of Harry L. Shedd, for the Trustee.

HARRY L. SHEDD, being called as a witness and first duly sworn, testified as follows:

Direct Examination by Mr. FOREST.

Q. What is your name? A. Harry L. Shedd.

Q. Mr. Shedd, what business are you engaged in in Phoenix?

(Testimony of Harry L. Shedd.)

A. In mercantile service at the present time.

Q. Do you give your attention to collections?

A. Yes.

Q. That is really your business?

A. That is my main business.

Q. Collections? A. Yes, sir.

Q. Now, Mr. Shedd, it is a part of your business, in connection with your occupation, to inquire into the financial condition, and situation of people in this valley and city with reference to their financial condition? A. It is.

Q. And how long have you lived in Phoenix?

A. About six years.

Q. And state whether or not you are well acquainted with the financial situation of the people in this vicinity? A. I feel that I am; yes.

Q. Have become so because of your occupation?

A. By reason of my occupation and my connection with two of the banks in the city. [71]

Q. You have also been in two of the banks in the city? A. Yes, sir.

Q. And by reason of your experience in the banks, you were able to determine to a considerable extent the financial—

Mr. JENCKES.—That is leading.

Mr. FOREST.—Withdraw that.

Q. What, if any, information did you acquire as to the financial standing of people throughout this community because of your relations with banks?

A. Well, I was, of course associated with the banks in different capacities; and it put me in touch with

(Testimony of Harry L. Shedd.)

their business relations with each other in the city. Of course, I had access to their accounts at the banks and business dealings, one and another; and had occasion to examine into the standing at different times; and it gave me a very good understanding of their financial condition around.

Q. Now, Mr. Shedd, I hand you Trustee's Exhibit No. 5, and ask you if you have seen it before to-day?

A. Yes, sir.

Q. From whom did you receive it?

A. From Mr. Christy.

Q. Did you at that time make an examination of it?

A. I did.

Q. You may state to the court now, Mr. Shedd, if in your opinion the accounts and claims set forth in that instrument are collectible.

Mr. JENCKES.—Just a minute. We object to that, if your Honor please, first, upon the ground that it is not a [72] matter upon which Mr. Shedd has qualified to give an opinion by the mere fact of his having had some experience in the banks and in collecting other accounts; and, second, upon the ground that this is not a proper matter for such opinion evidence.

The REFEREE.—Let me ask Mr. Shedd.

Q. Mr. Shedd, for what purpose did Mr. Christy hand you that exhibit?

A. For what purpose?

Q. Yes.

A. He came over and asked me about—let me look at the list and examine it to see what I thought about

(Testimony of Harry L. Shedd.)

the possibility of collecting the accounts of these people who are listed in this exhibit.

Q. Are you acquainted or familiar with any of those accounts?

A. Yes, sir; these particular accounts.

Mr. FOREST.—Q. You mean the accounts or the men? A. I am with the men; yes.

The REFEREE.—Q. You are familiar and acquainted with some of the men? A. Yes, sir.

Q. How long have you been in the collection business, Mr. Shedd?

A. It has been three years the first of January, in Phoenix.

Q. Three years? A. Yes, sir. [73]

Q. Do you have any connection with the Merchants' and Manufacturers' Association?

A. I do, in a degree.

Q. Do you have access to their books?

A. In so far as a subscriber, I might say yes.

Q. Are you privileged when you get a list of accounts to peruse their records?

A. No more than any person who is a member of the association can inquire about some person. I do not have access to their books like themselves. I don't believe that I have ever been what you might say turned down. I have made inquiry about a man's standing, and they have given me information; and in return, I am very often questioned by them as to the standing of an individual.

Q. Did you, after perusing that list of debtors,

(Testimony of Harry L. Shedd.)

decline to accept or attempt to collect any of those accounts?

A. No, sir; they have never been offered to me for collection.

Q. What were they offered to you for?

A. I was asked concerning them, as I said before. I was asked concerning the standing of the people who were owing the accounts and whether they were collectible.

Mr. JENCKES.—We submit, if your Honor please, that the witness in this instance is asked to testify to the direct fact which is in issue here—as to whether in his opinion these accounts are collectible. Now, Mr. Forest is attempting to qualify him as an expert on collection matters. The only way an expert can testify on any question [74] in the case to embody it hypothetically.

The REFEREE.—Q. Mr. Shedd, are you personally acquainted with any of those debtors on that list?

A. Am I personally acquainted with them? Yes, sir.

Q. About what percentage?

A. I don't know that I could tell you. I have not gone over to check them out in that way, but I think—I would say that I feel that I am acquainted with the majority of them.

Q. Have you had any experience with those with whom you are acquainted in attempting to make collections? A. Yes, sir.

Q. Then, did you base your answer on your ex-

(Testimony of Harry L. Shedd.)

perience with those with whom you are acquainted?

A. Yes.

The REFEREE.—I think that is about as near as you can get. It is a hard proposition.

Mr. JENCKES.—If he knows of his personal knowledge, of course, he can testify.

The REFEREE.—It is part conclusion, of course. I think I will permit Mr. Shedd to testify.

(Question read by the reporter: "You may state to the Court now, Mr. Shedd, if in your opinion the accounts and claims set forth in that instrument are collectible.")

Mr. JENCKES.—We desire to note an exception to the ruling of the Referee.

A. There is a very small percentage of these accounts that is collectible; and those that you might consider [75] collectible at all, are such accounts that it would take a good deal of time and patience, and probably in most instances legal procedure in order to get them.

Q. Could you get them then?

A. No, sir—except to get a judgment.

Q. Take your chances in satisfying the judgment?

A. Yes, sir.

Mr. FOREST.—You may cross-examine the witness.

Cross-examination by Mr. JENCKES.

Q. Mrs. J. T. Barnum, \$8.15. What about Mrs. Barnum? Has she any property?

A. Mrs. Barnum, I think, is a party who a short

(Testimony of Harry L. Shedd.)

time ago lived in Paradise Valley, and to my knowledge has no property.

Q. To your knowledge? You know that she has no property?

A. I could not say that she has not any at the present time, Mr. Jenckes, because since I have known the party it is barely possible that she may have acquired some.

Q. So far as you know, she might have?

A. She might have at the present time.

Q. Have you made inquiry among the banks to ascertain whether she has any account in the banks?

A. I know that I had some experience with that particular person at one time. I had a \$10 bank note for collection, and unable to find anything at that time to realize on. I think she was a relative of some member of the bank force, if I remember rightly. [76]

Q. Here is O. Bane. What do you know about his inability to pay his account?

A. I think he is a man who is a painter and contractor by trade, and is a man that I have had a little experience with and up to this time I have never been able to get any money out of him. However, I have never brought suit against him.

Q. Here is R. L. Bailis. What do you know about his financial standing?

A. Mr. Bailis? I am not as well acquainted with him as some of the others, but such reports as I have heard are that he is very slow pay, and as to property, I could not say.

(Testimony of Harry L. Shedd.)

Q. You don't know whether he has any property?

A. I don't know whether he has any property now or not. In the course of the past two years, I have had something against that party, but I don't recall what. I know that I did not get any money out of him.

Q. As far as his account being uncollectible is concerned, all you know is what you have heard?

A. I have had an account within the past two years.

Q. How much was the account?

A. I don't know.

Q. Did you bring suit? A. No.

Q. As a matter of fact, have you brought suit against any of these and got execution?

A. I could not answer that offhand? [77]

Q. I thought you went over the list.

A. I did not go over it for that purpose. I could not say whether or not I filed suit, or who I filed suit against without going over the list.

Q. When you go over this list and say it is uncollectible, you merely make a long guess?

A. Either the experience of myself or those fixed to know.

Q. I wish you would take that list and look through it and see how many people you have brought suit against and taken out execution against.

A. I don't know that I could do that without referring to my records.

Q. Did you examine your records before?

A. I did not look for that purpose. I looked to

(Testimony of Harry L. Shedd.)

see if the accounts were collectible. Here is one man I brought suit against—Mr. Bradford—for house rent that he owed a poor old man in the eastern part of town. I am not sure about that. I got judgment, but not satisfied.

Q. Did you take out execution?

A. Never been able to find anything in his own name.

Q. Anybody else?

A. Mr. Boring. I have endeavored several different times to get money out of him. I have never brought suit against him. Mr. Boardman is a man I have had a little dealing with, and have got a little money out of; but it was only through money being placed in my hands for the purpose of suing him that I got that settlement. [78]

Q. You did get that, however? How much?

A. I could not recall that.

Q. About?

A. I could not recall offhand.

Q. As a matter of fact, Mr. Shedd, has not your experience been in this collection business that you do not get anything unless you bring suit?

A. No, sir; my general experience is that I have brought probably something over one hundred suits in the courts of Phoenix within the last one and a half or two years; and of those suits, I think four or five have probably been decided against me, or in favor of the defendant. In some of those cases—a great number—we still have judgments. In some cases they were settled upon judgment being ren-

(Testimony of Harry L. Shedd.)

dered. In others we have executions out now, trying to get property sufficient to satisfy.

Q. In your experience, what percentage of the cases where you do bring suit for collection do you collect after bringing suit?

A. I would say possibly seventy-five per cent—at least that—just approximately.

Q. What is your opinion about this particular list?

A. I was going to say, in connection with this, that the suits in a great many instances—that when they get notices from us to come to see us about the accounts they make propositions of payment rather than be sued, and know that we are after the money and make a fair settlement with us. [79]

Q. These accounts were never placed in your hands for collection?

A. These particular accounts? No, sir.

Mr. JENCKES.—That is all.

(The witness was then excused.)

Testimony of L. C. Taylor, for the Trustee.

L. C. TAYLOR, being called as a witness and first duly sworn, testified as follows:

Direct Examination by Mr. FOREST.

Q. What is your name? A. L. C. Taylor.

Q. What is your business, Mr. Taylor?

A. Wall paper, decorating, and so forth.

Q. You have a store? A. Yes, sir.

Q. Do you know King and Pobe?

A. I don't know Pobe. I know a man by the name of King.

Q. Is it the same one who is connected with Pobe?

(Testimony of L. C. Taylor.)

A. I don't know.

Q. What is his occupation—this King?

A. He is a painter.

Q. Is he still here in the country? A. Yes.

Q. Are you acquainted with his financial standing?

A. Not particularly. I know what he works at, generally.

Q. What would you say as to the collectibility of [80] an account against him for \$103?

A. Personally, I don't think very much of it.

Q. Has he got property so that such an account is collectible? A. Not to my knowledge.

Q. And Allison Burg—do you know him?

A. No.

Q. A. Bane—do you know him? A. Yes.

Q. What is his occupation?

A. He is a painter.

Q. What would you say with reference to the collectibility of a claim against him for \$241.60?

Mr. JENCKES.—We desire to object to Mr. Taylor's testifying as to the collectibility of these accounts upon the same ground that we objected to the evidence of Mr. Shedd—that it is not the proper ground for opinion evidence to be given, and, further, that Mr. Taylor has not qualified.

The REFEREE.—I will sustain the objection.

Mr. FOREST.—Q. You say you are acquainted with Mr. Bane? A. Yes.

Q. Know him quite well?

A. Well, no; I would not say that I know him quite well.

(Testimony of L. C. Taylor.)

Q. Have you ever had any business relations with him? A. No; not to my knowledge. [81]

Q. You, being in the paint business, have you had occasion to inquire into his financial responsibility?

A. More from hearsay than personal.

Q. Have you had occasion to inquire into his financial responsibility? A. Yes.

Q. And also to inquire into his disposition for paying bills? A. Yes.

Q. Then, from the inquiries that you have made, you are familiar as to his reputation, then, for being able and willing or not able to pay his bills?

Mr. JENCKES.—We object to that.

Mr. FOREST.—I think that is quite competent.

Mr. JENCKES.—The question as to whether he has a reputation for paying his bills has nothing to do with the collectibility of the account. The question is: Are these accounts collectible?

The REFEREE.—Sustain the objection.

Mr. FOREST.—Q. Has he any property?

A. Not to my knowledge. I have understood that he had property in his wife's name.

Mr. FOREST.—It is the ruling of the Court that he cannot testify to any of these accounts?

The REFEREE.—Unless he is familiar or got his information from a proper source. A man may have a reputation by hearsay of being a poor payer, but he may be able to pay.

Mr. FOREST.—Q. J. J. Mitchell—are you acquainted [82] with him? A. No.

Q. T. H. Wilson?

(Testimony of L. C. Taylor.)

A. I knew him when he was here.

Q. What has become of Wilson?

A. I really don't know.

Q. Is he still here? A. No.

Q. Left the country? A. Yes.

Q. Leave any property here?

A. Not to my knowledge.

Q. Do you know T. N. Walls? A. No.

Mr. FOREST.—That is all.

Cross-examination by Mr. JENCKES.

Q. As far as Mr. Bane is concerned, you have heard that he has property in his wife's name?

A. Yes.

Q. You don't know whether it is her separate property or community property? A. No.

Mr. JENCKES.—That is all.

(The witness was then excused.)

Mr. FOREST.—The trustee rests.

Mr. JENCKES.—Now, on behalf of the respondents, we move that the petition of the trustee for an order levying [83] an assessment upon the unpaid subscriptions to stock be dismissed upon the ground that there is no evidence introduced on behalf of the trustee to show that there was in the first place any subscriptions at all to the stock, and upon the further ground that the evidence disclosed by the trustee himself shows that the stock in the company was acquired by the respondents by a transfer to the company of a stock of merchandise, the valuation of which is shown by their own evidence to be \$20,000.

(Testimony of J. B. Long.)

Those are the grounds of the motion, and in support of the motion I would ask leave to submit authorities showing my contention to be correct. . . .

Testimony of J. B. Long, for the Trustee (Recalled).

J. B. LONG, being recalled as a witness and having been theretofore duly sworn, testified as follows:

Examination by the REFEREE.

Q. I want to ask you, Mr. Long, if either you or any of the other stockholders ever put in any additional cash or anything else to represent the stock that you received? A. No, sir.

Q. So, then, the stock which was issued—all the stock was simply, solely and only for these goods and fixtures which were transferred by you and Mrs. M. West?

A. Yes, sir; the deal was considered closed. There is no stock left in the treasury. It was all issued in payment for the goods that the company received.

(The witness was then excused.) [84]

THEREUPON it was agreed that the hearing should stand adjourned while the parties submitted briefs. [85]

*In the District Court of the United States for the
District of Arizona.*

Before FRED A. LARSON, Esq., Referee in
Bankruptcy.

In the Matter of PHOENIX HARDWARE COM-
PANY, a Corporation, Bankrupt.

State of Arizona,

County of Maricopa,—ss.

I HEREBY CERTIFY that I was appointed official reporter and duly sworn truly and correctly to take down in shorthand and transcribe into long-hand the testimony given and proceedings had at the hearing on the 14th day of December, 1915, at Phoenix, Arizona, before Fred A. Larson, Esq., Referee in Bankruptcy, in the above-entitled matter; that I was present and so took down in shorthand all the testimony given and proceedings had; that the said shorthand notes, so taken, were full, true and correct of all oral testimony adduced at said hearing, including questions propounded to witnesses on the stand and their answers thereto, and all objections, stipulations, concessions and requests of counsel, as well as the rulings, orders and remarks of the Referee in Bankruptcy; and that the foregoing typewritten sheets, numbered 1 to 63, inclusive, comprise a full, true and correct transcript of said shorthand notes, all done according to the best of my skill and ability.

Dated at Phoenix, Arizona, the 26th day of March, 1916.

RAYMOND ALLEE,
Reporter. [86]

[Endorsements]: M. 46. In the District Court of the United States for the District of Arizona. Before Fred A. Larson, Esq., Referee in Bankruptcy. In the Matter of Phoenix Hardware Company, a Corporation, Bankrupt. Reporter's Transcript of Testimony and Proceedings Before Fred A. Larson, Esq., Referee in Bankruptcy, Phoenix, Maricopa County, State of Arizona, December 14, 1915. Raymond Allee, Stenographer, Phoenix, Arizona. Filed April 4, 1916. Fred A. Larson, Referee. [87]

**Trustee's Exhibit No. 1—Certified Copy of Articles
of Incorporation of Phoenix Hardware Co.**

STATE OF ARIZONA

Office of the

ARIZONA CORPORATION COMMISSION.

United States of America,

State of Arizona,—ss.

The ARIZONA CORPORATION COMMISSION does hereby certify that the annexed is a true and complete transcript of the

ARTICLES OF INCORPORATION

of

“PHOENIX HARDWARE COMPANY,”

which were filed in the office of the Auditor of Arizona on the 19th day of March, A. D. 1907, at 2:00 o'clock P. M., as provided by law.

IN TESTIMONY WHEREOF, The Arizona Corporation Commission, by its Chairman, has hereunto set its hand and affixed its Official Seal. Done at the city of Phoenix, the Capitol, this 1st day of April, A. D. 1915.

ARIZONA CORPORATION COMMISSION,
F. A. JONES,
Chairman.

[Seal]

F. L. BANTA,
Acting Secretary.

(Revenue Stamp) [88]

ARTICLES OF INCORPORATION
of the

PHOENIX HARDWARE COMPANY.

KNOW ALL MEN BY THESE PRESENTS: That we, J. B. Long and J. W. Long, of Maricopa County, Arizona, desiring to incorporate ourselves and become incorporated under the provisions of the laws of the Territory of Arizona, for the purpose of engaging in the lawful enterprises, business and occupation hereinafter specified, to make, adopt, sign and acknowledge according to law these Articles of Incorporation.

ARTICLE I.

The names of the incorporators are J. B. LONG and J. W. LONG.

The name adopted by this corporation and by which it shall be known in all of its affairs is the "PHOENIX HARDWARE COMPANY," and its principal place of transacting business is and shall be the City of Phoenix, in the County and

Territory aforesaid, but it shall have the right to transact its business in such other place or places in said Territory as the Board of Directors may hereafter from time to time designate.

ARTICLE II.

The general nature of the business proposed to be transacted by this corporation and in which it is to engage is that of doing a general hardware and implement business, buying and selling of all kinds of merchandise and real and personal property of every kind and character and description; borrowing money and contracting to pay the same at such time or times and at [89] such rate of interest as its Board of Directors may deem advisable, and to secure the payment of the same by mortgage, pledge, or otherwise, on any or all of the property of the corporation; and to transact any and all kinds of business that may be transacted by a natural person.

ARTICLE III.

The amount of the capital stock authorized by this corporation is fifty thousand (\$50,000). It shall be divided into five hundred (500) shares and the par value of each share shall be one hundred dollars (\$100). The times when and the conditions upon which it shall be paid are as follows: The whole thereof within thirty (30) days after the same has been subscribed for, provided that the Board of Directors of said Company may accept merchantable hardware at such prices as they may deem proper in part or full payment for any subscription to the stock of this corporation.

ARTICLE IV.

The time of the commencement of this corporation shall be the 19th day of March, 1907, and it shall endure for a period of twenty-five (25) years thereafter. And said corporation shall commence the transaction of the business for which it is incorporated as soon as ten per cent of the capital stock has been subscribed for.

ARTICLE V.

The affairs of this corporation shall be conducted by a Board of Directors consisting of three stockholders who shall be elected annually by the stockholders from among their number [90] at the annual election thereof to be held in the office of the company at Phoenix, Arizona, on the first Tuesday in November in each year hereafter at the hour of ten o'clock A. M., and until the first annual meeting of said stockholders, the following named persons who are subscribers to the capital stock of this corporation shall constitute the Board of Directors, namely J. B. LONG, J. W. LONG and WEST.

ARTICLE VI.

The officers of this corporation shall be a President, Secretary and Treasurer, and such other officers as may be provided for by the by-laws. The president shall be elected by the Board of Directors from among their number annually immediately after the annual meeting of the stockholders. The other officers shall be elected by the Board at such time and place as they shall designate, but such other officers need not be members of the Board of Directors.

The Directors and officers of this corporation shall hold their respective offices for one year from the date of their election and until their successors are elected and qualified unless such director or officer shall cease to be a stockholder in the corporation, and in any such case such director or officer shall cease to be a director or officer in the corporation from the date he ceases to be a stockholder therein; provided that all officers who are appointed by the Board may be removed by them at their pleasure.

All vacancies in the Board of Directors or officers of this corporation shall be filled for the remainder of the term by the remaining members of the Board of Directors. [91]

ARTICLE VII.

The Board of Directors of this corporation shall have the power to establish by-laws and make all rules and regulations deemed advisable for the management of the affairs of this corporation and its officers not inconsistent with law. The majority of such Directors shall constitute a quorum.

ARTICLE VIII.

The highest amount of indebtedness or liability, direct or contingent to which this corporation is at any time to be subject or subject itself is thirty-two thousand dollars (\$32,000).

ARTICLE IX.

The stockholders of this corporation and their private property shall be exempt from the corporate debts of this corporation.

IN WITNESS WHEREOF, We have hereunto set our hands and seals this 19th day of March, 1907.

J. B. LONG,

J. W. LONG. [92]

Territory of Arizona,
County of Maricopa,—ss.

Before me, W. J. Kingsbury, a Notary Public in and for the County of Maricopa, Territory of Arizona, on this day personally appeared J. B. Long, and J. W. Long, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purpose and consideration therein expressed.

GIVEN under my hand and seal of office this 19th day of March, A. D. 1907.

[Notarial Seal]

W. J. KINGSBURY,

Notary Public.

My Commission expires April 21, 1908. [93]

Territory of Arizona,
County of Maricopa,—ss.

I, C. F. Leonard, County Recorder in and for the County and Territory aforesaid, hereby certify that I have compared the foregoing copy with the original Articles of Incorporation of the "Phoenix Hardware Company" filed and recorded in my office on the 19th day of March, 1907, in Book No. — of Incorporations, at page —, and that the same is a full, true and correct copy of such original and of the whole thereof.

WITNESS my hand and seal of office this 19th day of March, 1907.

[Seal]

C. F. LEONARD,
County Recorder.
By V. L. Vaughn,
Deputy. [94]

Filed in the office of the Territorial Auditor of the Territory of Arizona this 19 day of March, A. D. 1907, at 2:00 P. M., at request of Phoenix Hardware Company, whose postoffice address is Phoenix, Arizona.

JOHN H. PAGE,
Territorial Auditor. [95]

Trustee's Exhibit No. 1. M. A. Raymond Allee,
Reporter. December 14, 1915. [96]

**Trustee's Exhibit No. 2—Minutes of Meeting of
Board of Directors of Phoenix Hardware Co.,
March 19, 1907.**

Minutes of the first meeting of the Board of Directors of the PHOENIX HARDWARE COMPANY held at the office of the Company at Phoenix, Arizona, March 19, 1907.

On motion, J. B. Long was elected Chairman of the meeting. He announced that the Articles of Incorporation had been filed with the County Recorder and Territorial Auditor, and that it was proper for the directors to proceed to organize, all the directors being present.

On motion, the order of business was made the election of a President, Secretary and Treasurer.

On motion, J. B. Long was elected President of the Company.

On motion, J. W. Long was elected Secretary and Treasurer of the Company.

On motion, W. J. Kingsbury was appointed statutory agent for the Company by the following resolution:—

“RESOLVED, That W. J. Kingsbury, a bona fide resident of Tempe, in the Territory of Arizona, and who has been a resident of the said Territory for more than three years next preceding the date hereof, be, and he hereby is, appointed the agent of the PHOENIX HARDWARE COMPANY, upon whom all notices and processes, including service of summons, may be served and when so served, shall be deemed, taken and held to be lawful personal service upon this corporation.

The Secretary of this corporation is hereby directed to file a copy of this Resolution in the office of the Auditor of the Territory of Arizona.”

On motion, it was ordered that the Treasurer carry the Company's account in the Phoenix National Bank and that all funds deposited by the Company for its account should be drawn out by checks taken from the Company's regular check-book and signed by [97] the President, and a complete stub record kept of all checks issued.

On motion, W. J. Kingsbury was requested to get up a set of by-laws for the Company.

On motion, the meeting was adjourned.

J. W. LONG,
Secretary.

Attest: J. B. LONG.

President. [98]

Trustee's Exhibit No. 2 Raymond Allee. M. B.
December 14, 1915.

Trustee's Exhibit No. "1." J. M. Bloomfield, Jan.
26, 1915. Reporter. [99]

**Offer, March 5, 1907, Long to Arizona Hardware &
Vehicle Co.**

Phoenix, Ariz., March 5, 1907.

Mess Arizona Hardware And Vehicle Co.

Mr. Fred Epstein, General Manager.

Gentlemen:—

I desire to purchase the stock and fixtures of The
Arizona Hardware And Vehicle Co. for the Phoenix
Hardware Co. And make you the following offer,

For the stock of merchandise I will pay you Fifty-
five (55) cents on the dollar, at net cost price in the
store,

For all the store fixtures, the lump sum of Fifteen
hundred (1500) Dollars net.

Terms cash on completion of the inventory.

Consigned goods not included in this offer,

Yours Very Truly,

The above bid for Mdse. Stock of fixtures are ac-
cepted.

ARIZONA HARDWARE AND VEHICLE
CO.,

By FRED EPSTEIN,
Col. Mgr.

Mch. 9-07. [100]

**Trustee's Exhibit No. 4—Receipt March 9, 1907,
Arizona Hardware & Vehicle Co. to Long.**

Phoenix Ariz. Mch. 9-07.

Received from J. B. Long the sum of Fifteen hundred Dollars (1500.00) on account of within Contract.

ARIZONA HARDWARE AND VEHICLE
CO.,

FRED EPSTEIN, Gen. Mrg.

Trustee's Exhibit No. 4. Raymond Allee, Reporter. December 14, 1915. [101]

*In the District Court of the United States for the
District of Arizona.*

In the Matter of PHOENIX HARDWARE COMPANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

Petition for Review.

Come now J. B. Long, J. W. Long, Margaret M. Long and M. West, by W. J. Kingsbury and Struckmeyer and Jenckes, their counsel, and file herewith their petition for review of the order of the Referee entered herein on the 15th day of March, 1916, and says that said Referee erred in ordering and adjudging as insufficient their response to the rule filed herein on November 3, 1915; that said Referee erred in

adjudging that respondents subscribed and did not fully pay for the number of shares of stock of said bankrupt corporation as set forth in said order, to wit, the said J. B. Long, 130 shares thereof, J. W. Long, 80 shares thereof, Margaret M. Long, 40 shares thereof, and M. West, 250 shares thereof, and further decreeing that respondents are liable in the sum of 33% of the par value of said stock less the amounts as found in said decree to have been paid thereon, to wit: The said J. B. Long in the sum of One Thousand Six Hundred and Ninety Dollars (\$1,690), the said J. W. Long in the sum of One Thousand Forty Dollars (\$1,040), the said Margaret M. Long in the sum of Five Hundred and Twenty Dollars (520), and the said M. West in the sum of Three Thousand Two Hundred and Fifty Dollars (\$3,250), and ordering the payment thereof to be made on or before the 5th day of April, 1916; that the said Referee [102] erred in adjudging that the book accounts remaining in the hands of the trustee as assets of said estate are not collectible; that the said Referee erred in adjudging that the original and only subscribers to the stock of said bankrupt corporation are the respondents, J. B. Long, J. W. Long, Margaret M. Long and M. West; that the said Referee erred in adjudging that each of respondents have paid upon said subscriptions at the rate of 20% of their par value or Twenty Dollars (\$20) per share, and that there remains unpaid on each and all of said subscriptions 80% of their par value or Eighty Dollars (\$80) per share; that the said Referee erred in adjudging that respondents

paid for the entire capital stock of said bankrupt corporation the sum of Ten Thousand Dollars (\$10,000), and that with said sum the said bankrupt corporation purchased a stock of goods from the Arizona Hardware and Vehicle Company and paid therefor the sum of Ten Thousand Dollars (\$10,000); that the said Referee erred in adjudging that by agreement made at the time respondents subscribed to the capital stock of the bankrupt corporation, respondents, by agreement, were credited with the unpaid balance of the par value of their said subscriptions, by discount, and the stock account between said bankrupt corporation and respondents balanced thereby; that said Referee erred in adjudging that the facts set forth in said order of said Referee were in effect a representation to the public by the officers, managers and agents of said bankrupt corporation; that all its capital stock had been subscribed for and had been paid in full; that said order so entered by the said Referee is void for the reason that the petition upon which said order is based does not state facts sufficient to authorize this Court to levy an assessment upon the capital stock of said bankrupt corporation belonging to respondents, and further on [103] the ground that the petition upon which said order is based on its face shows that the assessment upon the capital stock of said bankrupt corporation owned by respondents is barred by the statute of limitations of the State of Arizona, to wit, paragraphs 711 and 714, Revised Statutes of Arizona, 1913; that said Referee erred in entering said order on the 15th day of March, 1916, a copy of which is

filed herewith, that said order is erroneous and void and said Referee had no jurisdiction to enter same.

WHEREFORE, the said J. B. Long, J. W. Long, Margaret M. Long and M. West pray that said order entered herein by the Referee on March 15, 1916, be reviewed by the Honorable Judge of the District Court of the United States for the District of Arizona, and that said order be adjudged erroneous and void.

W. J. KINGSBURY,
STRUCKMEYER & JENCKES,
Attorneys for Respondents. [104]

*In the District Court of the United States for the
District of Arizona.*

In the Matter of PHOENIX HARDWARE COM-
PANY,

Bankrupt,

**Findings of Fact and Order Directing Trustee to
Make an Assessment on Each Share of Stock.**

This matter is before the referee upon petition of trustee for an order to show cause why M. West, J. B. Long, J. W. Long and Margaret M. Long should not be assessed on each share of stock of the Phoenix Hardware Company, subscribed to by them, at the rate of 24% on the par value thereof.

An answer was filed on behalf of each and all of said respondents which (after demurring to the petition on the grounds that it did not state facts sufficient to authorize the Court to levy an assessment upon the capital stock of said Phoenix Hardware

Company, belonging to respondents; and upon the further ground that the proposed assessment is barred by the statute of limitation of the State of Arizona) alleges in substance:

That they acquire the shares of capital stock of said Phoenix Hardware Company, owned by each of them by the sale of said Phoenix Hardware Company of a certain stock of merchandise of the value of \$20,000.00; that respondents did not subscribe for their capital stock at all, but they do not deny that they own the number of shares of stock hereinafter stated.

The said respondents by their answer deny that either as officers of said company or otherwise obtained credit from anyone for goods, wares and merchandise or money sold or advanced to said Phoenix Hardware Company upon any representation or statement that the said Phoenix Hardware Company had a capital stock of \$50,000 fully paid up.

The referee, after an argument by the attorneys for the respective parties, overruled the demurrer and thereafter, to wit, on the [105] 14th day of December, 1915, a hearing was had before this court, J. C. Forest appearing for the trustee and Struckmeyer & Jenckes and W. J. Kingsbury appearing for the respondents.

Testimony, both oral and documentary, was introduced on behalf of the trustee and the respondents, and the matter having been submitted to the Court for its consideration and decision, and after due deliberation thereon, Court finds the following facts and enters the order in accordance therewith:

FINDINGS OF FACT.

The Phoenix Hardware Company, bankrupt, was organized under the laws of the Territory, now State, of Arizona, during the month of March, 1907, with a capital stock of \$50,000, divided into 500 shares of the par value of \$100 each.

The said company was adjudicated bankrupt on the 24th day of October, 1914, and on the 20th day of November, 1914, Charles B. Christy became and now is the duly elected, qualified and acting trustee of the bankrupt's estate.

The total amount of claims filed, allowed and remaining unpaid against the said estate, amounts to the sum of \$5,835 and the statutory time for filing claims has long since expired.

The referee estimates that the necessary costs, disbursements, commissions, and counsel fees in connection with this matter would be \$665.

At the time of the hearing the trustee had in his hands a balance of funds applicable to the payment of these claims amounting to the sum of \$377.94, said balance being also subject to the payment of costs, disbursements, commissions, and counsel fees.

The only remaining assets of this estate are certain book accounts, which are not collectable, and unpaid subscriptions to the stock of said bankrupt.

The original and only subscribers to the stock of said company, and the amount subscribed for by each, on the 19th day of March, 1907, are the following: [106]

| | |
|-----------------------|------------|
| M. West | 250 shares |
| J. B. Long..... | 130 shares |
| J. W. Long..... | 80 shares |
| Margaret M. Long..... | 40 shares |

That each of said subscribers have paid on said subscription at the rate of 20% of their par value or \$20.00 per share, and there remains unpaid on each and all of said subscription 80% of their par value or \$80 per share.

The referee further finds that the said subscribers paid for the entire capital stock of said company the sum of \$10,000 and with said sum the said Phoenix Hardware Company, by and through its duly authorized officers and agents, purchased a stock of goods from the Arizona Hardware & Vehicle Company and paid therefor the sum of \$10,000.

That no part of the 80% of the par value of said stock or \$80 per share has ever been paid into the treasury of the said Phoenix Hardware Company, bankrupt, by said subscribers or any or either of them or by anyone for them, but by agreement made at the day of the subscriptions the amounts paid thereon by each of said subscribers were credited to each of said subscribers and the balance unpaid or the par value thereof was, in effect, credited by discount and the stock account between, the said bankrupt corporation and said subscribers was balanced by such discount. That the facts herein set forth was in effect a representation to the public by the officers, managers and agents of said corporation, bankrupt, that all its capital stock had been subscribed for, and had been paid in full.

That at the time of the organization of said company, its articles of incorporation designated J. B. Long, J. W. Long and M. West the Board of Directors of said corporation and that ever since the said date they have continued to be and now are the Board of Directors of said corporation, bankrupt.

That on the 19th day of March, 1907, the said Board of Directors elected the following named persons as the officers of said corporation, to wit:

J. B. Long.....President

J. W. Long.....Secretary-Treasury [107]

and W. J. Kingsbury was appointed the legal agent of said corporation, and that said last named parties are still the duly elected qualified and acting officers of said corporation bankrupt.

The referee further finds that said subscribers for the stock of said company are liable to the trustee of said bankrupt estate for the unpaid amounts on such *subscriptions* or so much thereof as may be necessary to pay the debts of the bankrupt estate, and that an assessment of 33% upon the par value of each share of stock of said Phoenix Hardware Company, bankrupt, owned by each of said subscribers if credited with the amount heretofore paid thereon by each of said stockholders would equalize the burden upon the said stockholders and also bring into the hands of the trustee of said estate a sufficient amount to pay the debts of the said bankrupt estate and the necessary costs, disbursements, expenses, and counsel fees in the prosecution of this proceeding.

ORDER.

And now, to wit, this 15th day of March, 1916, on the petition of Charles B. Christy, the trustee in bankruptcy of the estate of said bankrupt, and on the order to show cause dated November 3, 1915, signed by Fred A. Larson, referee in bankruptcy, why M. West, J. B. Long, J. W. Long and Margaret M. Long should not be assessed at the rate of 34% of the par value on each share of stock of the said bankrupt company, subscribed to by *the*, and it appearing that due service of said order to show cause has been made on the said M. West and that she has subscribed and not fully paid for 250 shares of stock of said bankrupt, and an answer having been filed and testimony having been taken, and after hearing J. C. Forest for the petitioner and J. S. Jenckes in opposition, and after due deliberation had,—

It is ordered and decreed that M. West is liable in the sum of 33% of the par value of 250 shares of the stock of said Phoenix Hardware Company subscribed for by her, less \$5,000 paid thereon, or in the sum of \$3,250, on her said subscription, to the trustee [108] of the estate of said Phoenix Hardware Company, in said sum, and that she make payment thereof to Charles B. Christy, trustee, in bankruptcy of Phoenix Hardware Company, bankrupt, at Phoenix, Arizona within 20 days from the date of this order, and on or before the 5th day of April, 1916, said subscription when paid and collected to become a part of the assets of the said bankrupt estate, and to be accounted for and disbursed under the orders of this court.

In default of such payment Chas. B. Christy, trustee of the estate of said bankrupt, is hereby authorized and directed to institute such proceedings against said M. West as are necessary to recover the said sum due by her on said stock either at law or equity.

Referee.

ORDER.

And now, to wit, this 15th day of March, 1916, on the petition of Charles B. Christy, the trustee in bankruptcy of the estate of said bankrupt, and on the order to show cause dated November 3d, 1915, signed by Fred A. Larson, referee in bankruptcy, why M. West, J. B. Long, J. W. Long and Margaret M. Long should not be assessed at the rate of 34% of the par value on each share of stock of the said bankrupt company, subscribed to by them, and it appearing that due service of said order to show cause has been made on the said J. B. Long, and that he has subscribed and not fully paid for 130 shares of stock of said bankrupt, and an answer having been filed and testimony having been taken, and after hearing J. C. Forest for the petitioner and J. S. Jenekes in opposition, and after due deliberation had,—

It is ordered and decreed that J. B. Long is liable in the sum of 33% of the par value of 130 shares of the stock of said Phoenix Hardware Company, subscribed for by him, less \$2,600 paid thereon, or in the sum of \$1,690, on his said subscription, to the trustee of the estate of said Phoenix Hardware Com-

pany in said sum, and [109] that he make payment thereof to Charles B. Christy, trustee in bankruptcy of Phoenix Hardware Company, bankrupt, at Phoenix, Arizona, within 20 days from the date of this order, and on or before the 5th day of April, 1916, said subscription when paid and collected to become a part of the assets of the said bankrupt estate, and to be accounted for and disbursed under the orders of this Court. In default of such payment Chas. B. Christy, trustee of the estate of said bankrupt, is hereby authorized and directed to institute such proceedings against said J. B. Long as are necessary to recover the said sum due by him on said stock either at law or in equity.

Referee.

ORDER.

And now, to wit, this 15th day of March, 1916, on the petition of Charles B. Christy, the trustee in bankruptcy of the estate of said bankrupt, and on the order to show cause dated November 34e, 1915, signed by Fred A. Larson, referee in bankruptcy, why M. West, J. B. Long, J. W. Long and Margaret M. Long should not be assessed at the rate of 34% of the par value on each share of stock of the said bankrupt company, subscribed to by them, and it appearing that due service of said order to show cause has been made on the said J. W. Long, and that he has subscribed and not fully paid for 80 shares of stock of said bankrupt, and an answer having been filed and testimony having been taken, and after hearing J. C. Forest for the petitioner and J. S.

Jenckes in opposition, and after due deliberation had,—

It is ordered and decreed that J. W. Long is liable in the sum of 33% of the par value of 80 shares of the stock of said Phoenix Hardware Company subscribed for by him, less \$1,600, paid thereon, or in the sum of \$1,050, on his said subscription, to the trustee of the estate of said Phoenix Hardware Company in said sum, and that he make payment thereto to Charles B. Christy, trustee in [110] bankruptcy of Phoenix Hardware Company, bankrupt, at Phoenix, Arizona, within 20 days from the date of this order, and on or before the 5th day of April, 1916, said subscription, when paid and collected, to become a part of the assets of the said bankrupt estate, and to be accounted for and disbursed under the orders of this court.

In default of such payment Chas. B. Christy, trustee of the estate of said bankrupt, is hereby authorized and directed to institute such proceedings against said J. W. Long as are necessary to recover the said sum due by him on said stock either by law or in equity.

Referee.

ORDER.

And now, to wit, this 15th day of March 1916, on the petition of Charles B. Christy, the trustee in bankruptcy of the estate of said bankrupt, and on the order to show cause dated November 3d, 1915, signed by Fred A. Larson, referee in bankruptcy, why M. West, J. B. Long, J. W. Long and Margaret

M. Long should not be assessed at the rate of 34% of the par value on each share of stock of the said bankrupt company, subscribed to by them, and it appearing that due service of said order to show cause has been made on the said Margaret M. Long, and that she has subscribed and not fully paid for 40 shares of stock of said bankrupt, and an answer having been filed and testimony having been taken, and after hearing J. C. Forest for the petitioner and J. S. Jenckes in opposition, and after due deliberation had,—

It is ordered and decreed that Margaret M. Long is liable in the sum of 33% of the par value of 40 shares of the stock of said Phoenix Hardware Company subscribed for by her, less \$800 paid thereon, or in the sum of \$520 on her said subscription, to the trustee of the estate of said Phoenix Hardware Company in said sum, and that she make payment thereof to Charles B. Christy, trustee in [111] bankruptcy of Phoenix Hardware Company, bankrupt, at Phoenix, Arizona, within 20 days from the date of this order, and on or before the 5th day of April, 1916, said subscription when paid and collected to become a part of the assets of the said bankrupt estate, and to be accounted for and disbursed under the orders of this Court.

In default of such payment Chas. B. Christy, trustee of the estate of said bankrupt, is hereby authorized and directed to institute such proceedings against said J. W. Long as are necessary to recover

the said sum due by him on said stock either at law or in equity.

Referee. [112]

[Endorsements]: No. M. 45. In the United States District Court in and for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt, J. B. Long, J. W. Long, Margaret M. Long and M. West, Respondents. Petition for Review. Filed March 28, 1916. Fred A. Larson, Referee. [113]

In the District Court of the United States in and for the District of Arizona.

No. —.

In the Matter of PHOENIX HARDWARE COMPANY,

.. . . . Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

Order Affirming Order and Decree of Referee as Amended.

This cause came on regularly for hearing in open court on this 4th day of October, 1916, on the certificate of the Referee, and on a petition for review of the order and decree of the Referee made and entered herein on the 15th day of March, 1916, because of certain alleged errors committed by the Referee, as set forth in said petition for review, in ordering

and decreeing that said respondents, J. B. Long, J. W. Long, Margaret M. Long and M. West, are liable to the trustee of said Bankrupt Estate in the sum of thirty-three (33) per cent on each share of the capital stock of said Bankrupt, owned and held by each of said respondents; J. C. Forest, Esquire, appearing for the Trustee of said Bankrupt, and J. S. Jencks, Esquire, appearing for said respondents, and after argument of the respective counsel, the Court took the matter under advisement, and after due consideration thereon;

IT IS ORDERED, that the four orders and decrees of the Referee each dated March 15th, 1916, with reference to the unpaid stock subscriptions of J. B. Long, J. W. Long, Margaret M. Long and M. West, respectively, are hereby affirmed for the reasons given by the learned Referee, Fred A. Larson, except that, J. S. Jencks, attorney for said respondents, having waived any and all objections to the Court making an order amending the four orders and decrees of said Referee, Fred A. Larson, so as to make the obligation created by said orders and decrees, [114] joint and several, without remanding the same to said Referee for amendment;

IT IS FURTHER ORDERED AND DECREED, that the said orders and decrees made and entered by said Referee dated March 15th, 1916, be and the same are amended so as to make the obligation created by said orders and decrees joint and several. That the respondents have thirty (30) days from

the date of this order to pay the amounts respectively due under said order.

Done in open court this 3d day of March, 1917.

WM. H. SAWTELLE,

Judge of the District Court for the State of Arizona.

[115]

[Endorsements]: No. B-101. In the District Court of the United States in and for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt. J. B. Long, J W. Long, Margaret M. Long, and M. West, Respondents. Order Affirming Order and Decree of Referee as Amended. Filed Mar. 3, 1917, at — M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [116]

*In the District Court of the United States in and for
the District of Arizona.*

No. B-101.

In the Matter of PHOENIX HARDWARE COM-
PANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

Notice of Appeal.

Come now the respondents, J. B. Long, J. W. Long, Margaret M. Long and M. West, and hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Honorable Court made and entered herein on the 2d day of

March, 1917, wherein and whereby the four orders and decrees heretofore entered herein by the Honorable F. A. Larsen, Referee of said Court, each dated March 15, 1916, levying an assessment of thirty-three per cent on each share of the capital stock of said bankrupt owned and held by each of said respondents, and ordering the payment thereof, were affirmed, and from each and every part thereof.

Dated Phoenix, Arizona, this 2d day of April, 1917.

W. J. KINGSBURY,
JOSEPH S. JENCKES,
Solicitors for Respondents. [117]

[Endorsements]: No. ——. In the United States District Court in and for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt. J. B. Long, J. W. Long, Margaret M. Long and M. West, Respondents. Notice of Appeal. Filed Apr. 3, 1917. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. Struckmeyer & Jenckes, Attorneys for Respondents. [118]

*In the District Court of the United States in and for
the District of Arizona.*

In the Matter of PHOENIX HARDWARE COM-
PANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

Petition for an Order Allowing Appeal.

To the Honorable WILLIAM H. SAWTELLE,
Judge of the District Court, in and for the Dis-
trict of Arizona:

The above-named J. B. Long, J. W. Long, Margaret M. Long and M. West, respondents herein, feeling themselves aggrieved by the order of this Honorable Court, made and entered herein on March 2, 1917, wherein and whereby the four orders and decrees heretofore entered herein by the Honorable F. A. Larsen, Referee of said Court, each dated March 15, 1916, levying an assessment of thirty-three per cent on each share of the capital stock of said bankrupt owned and held by each of said respondents, and ordering the payment thereof, were affirmed for the reasons given by the said Referee, and wherein and whereby said respondents were given thirty days from the date of said order within which to pay said assessments, do hereby appeal from said order and each and every part thereof, to the Circuit Court of Appeals in and for the Ninth Judicial Circuit, for the reasons specified in the assignment of errors which is filed herein, and your petitioners pray that their appeal be allowed and that such citation issue as is provided by law, and that a transcript of [119] the records, proceedings and papers upon which said order was based duly authenticated may be sent to the United States District Court of Appeals in and for the Ninth Judicial Circuit, sitting at the City of San Francisco, State of California, and your petitioners further

pray that the proper order touching the security required by them to perfect their said appeal herein be made.

_____,
 _____,
 Solicitors for Respondents. [120]

*In the District Court of the United States in and for
 the District of Arizona.*

In the Matter of PHOENIX HARDWARE COM-
 PANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
 and M. WEST,

Respondents.

Notice of Appeal.

Come now the respondents, J. B. Long, J. W. Long, Margaret M. Long and M. West, and hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of this Honorable Court made and entered herein on the 2d day of March, 1917, wherein and whereby the four orders and decrees heretofore entered herein by the Honorable F. A. Larsen, Referee of said Court, each dated March 15, 1916, levying an assessment of thirty-three per cent on each share of the capital stock of said bankrupt owned and held by each of said respondents, and ordering the payment thereof, were affirmed, and from each and every part thereof.

Dated Phoenix, Arizona, this 2d day of April, 1917.

_____,
_____,
Solicitors for Respondents. [121]

*In the District Court of the United States in and for
the District of Arizona.*

In the Matter of PHOENIX HARDWARE COM-
PANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

Order Allowing Appeal and Fixing Bond.

This matter coming on for hearing this — day of April, 1917, on the petition of J. B. Long, J. W. Long, Margaret M. Long and M. West, respondents herein, for an order allowing their appeal, it is hereby ordered that an appeal in the above-entitled matter to the United States Circuit of Appeals for the Ninth Circuit be, and the same is hereby allowed as prayed, upon the respondents filing a bond in the sum of \$——, with sufficient surety, conditioned as required by law, for the payment of the costs of such appeal.

Done in open court this — day of April, 1917.

_____,
Judge of the District Court of the United States for
the District of Arizona. [122]

[Endorsements]: No. ——. In the United States District Court in and for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt. J. B. Long, J. W. Long, Margaret M. Long and M. West, Respondents. Petition for an Order Allowing Appeal. Filed Apr. 3, 1917. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. Struckmeyer & Jenckes, Attorneys for Respondents. [123]

In the District Court of the United States in and for the District of Arizona.

No. B-101.

In the Matter of PHOENIX HARDWARE COMPANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

Assignment of Errors.

And now come J. B. Long, J. W. Long, Margaret M. Long and M. West, respondents herein, and make and file this their assignment of errors:

The District Court of the United States of Arizona in making and entering the order of March 2, 1917, affirming the four orders and decrees of the Referee in Bankruptcy of said Court, entered herein on the 15th day of March, 1916, levying an assessment of thirty-three per cent on each share of said respondents, and ordering the payment thereof, is erroneous in each and all of the following particulars:

1. That the said Court erred in affirming the orders and decrees of the said Referee ordering and adjudging as insufficient the response of these respondents to the rule filed herein on November 3, 1915.

2. That the said Court erred in affirming the orders and decrees of the Referee adjudging that respondents subscribed and did not fully pay for the number of shares of stock of said bankrupt corporation, as set forth in said orders, and further decreeing that respondents are liable in the sum of thirty-three per cent of the par value of said stock less the amounts as found in said decrees to have [124] been paid thereon, and ordering the payment thereof, for the reason that as fully appears from the evidence taken before the Referee in said matter, the respondents never subscribed for any of the stock of said corporation, but that respondents became stockholders in said corporation by the sale to it of a certain stock of merchandise in consideration for said capital stock.

3. That the said Court erred in affirming the orders and decrees of the Referee adjudging that the book accounts remaining in the hands of the trustee of said bankrupt as assets of said estate are not collectible, for the reason that the evidence taken before the Referee in said matter shows that no effort has been made by the trustee to collect such book accounts.

4. That the said Court erred in affirming the orders and decrees of the Referee adjudging that the original and only subscribers to the stock of said

bankrupt corporation are the respondents herein, for the reason that the evidence taken before the Referee in said matter does not show that these respondents ever subscribed for any of the stock of said bankrupt corporation.

5. That the said Court erred in affirming the orders and decrees of the Referee adjudging that each of the respondents have paid upon said subscriptions at the rate of twenty per cent of their par value, or Twenty Dollars per share, and that there remains unpaid on each and all of said subscriptions eighty per cent of their par value, or Eighty Dollars per share, for the reason that the evidence taken before the Referee in said matter shows that there never was any subscription to said capital stock by respondents, but that, on the contrary, respondents acquired their stock by the sale to [125] said corporation of a stock of merchandise in consideration for the transfer to respondents of the entire capital stock of said corporation, and that there is no evidence to show that anything remains due from respondents to said corporation in consideration for said stock.

6. That the said Court erred in affirming the orders and decrees of the Referee adjudging that respondents paid for the entire capital stock of said bankrupt corporation the sum of Ten Thousand Dollars, and that with said sum the said bankrupt corporation purchased a stock of goods from the Arizona Hardware and Vehicle Company and paid therefor the sum of Ten Thousand Dollars, for the reason that the evidence taken before the Referee in

said matter shows that respondents did not pay any money to said corporation in consideration for the entire capital stock thereof and that said corporation had no money with which to purchase said stock of merchandise from the Arizona Hardware and Vehicle Company, but that the respondents purchased said stock of goods from the Arizona Hardware and Vehicle Company before the incorporation of the Phoenix Hardware Company, and held title to the same until the incorporation of said company, and then sold and delivered said stock of goods to said company in consideration for the transfer to them of the entire capital stock of said company.

7. That the said Court erred in affirming the orders and decrees of the Referee adjudging that by agreement made at the time respondents subscribed to the capital stock of the bankrupt corporation, respondents by agreement were credited with the unpaid balance of the par value of their said subscriptions by discount, and the stock account between said bankrupt corporation and respondents balanced thereby, for the reason that the evidence taken before the Referee in said [126] matter does not show any such transaction or transactions.

8. That the said Court erred in affirming the orders and decrees of the Referee in adjudging that the facts set forth in said orders of said Referee were in fact a representation to the public by the officers, managers and agents of said bankrupt corporation that all its capital stock had been subscribed for and had been paid in full, for the reason that the evidence taken before the Referee in said matter does

not disclose any such representations, or any facts amounting in law to such representations.

9. That the said Court erred in affirming the orders and decrees of the Referee, for the reason that said orders and decrees so entered by the Referee are void, because the petition upon which said orders and decrees were based does not state facts sufficient to authorize this Court to levy an assessment upon the capital stock of said bankrupt corporation belonging to respondents.

10. That the said Court erred in affirming the orders and decrees of the Referee, for the reason that said orders and decrees so entered by the Referee are void, because the petition upon which said orders and decrees are based upon its face shows that if there was any indebtedness of respondents to the corporation upon the capital stock of said corporation owned by respondents, such indebtedness is barred by the statute of limitations of the State of Arizona, to wit, Paragraphs 711 and 714, Revised Statutes of Arizona, 1913.

11. That the said Court erred in amending the orders and decrees of the Referee so as to make the obligation created by said orders and decrees joint and several, for the reason that the liability of a stockholder in a corporation for the unpaid balance upon his subscription for capital [127] stock is a several liability only.

12. That the Court erred in affirming the orders and decrees of the Referee, for the reason that the facts found by the Referee in making and entering such orders and decrees, and upon which such orders

and decrees were based, are contrary to the evidence introduced at the hearing before the Referee.

W. J. KINGSBURY,
JOSEPH S. JENCKES,
Solicitors for Respondents.

[Endorsements]: In the United States District Court in and for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt. J. B. Long, J. W. Long, Margaret M. Long and M. West, Respondents. Assignment of Errors. Filed Apr. 3, 1917, at — M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. Struckmeyer & Jenckes, Attorneys for Respondents. Goodrich Building, Phoenix, Arizona. [128]

*In the District Court of the United States, in and for
the District of Arizona.*

No. B-101.

In the Matter of PHOENIX HARDWARE COM-
PANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

Order Allowing Appeal and Fixing Bond.

This matter coming on for hearing this 3d day of April, 1917, on the petition of J. B. Long, J. W. Long, Margaret M. Long and M. West, respondents herein, for an order allowing their appeal, it is hereby ordered that an appeal in the above-entitled

matter to the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby allowed as prayed, upon the respondents filing a bond in the sum of Five Hundred Dollars with sufficient surety, conditioned as required by law, for the payment of the costs of such appeal.

Done in open court this 3 day of April, 1917.

WM. H. SAWTELLE,

Judge of the District Court of the United States for the District of Arizona.

[Endorsements]: In the United States District Court in and for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt. J. B. Long, J. W. Long, Margaret M. Long and M. West, Respondents. Order Allowing Appeal and Fixing Bond. Filed Apr. 3, 1917, at — M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. Struckmeyer & Jenckes, Attorneys for Respondents. Goodrich Building, Phoenix, Arizona. [129]

In the District Court of the United States in and for the District of Arizona.

In the Matter of PHOENIX HARDWARE COMPANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

**Order Under Rule 16, Section 1, Enlarging Time to
File Transcript of Record and Docket Cause.**

It appearing to the Court that additional time is required to prepare the transcript of record herein upon appeal, and other good cause therefor appearing,—

IT IS ORDERED that the time within which the original certified transcript of the record in the above-entitled cause may be filed, and within which the cause may be docketed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, be and the same is hereby enlarged to and including the 2d day of June, A. D. 1917.

Dated at Phoenix, Arizona, this 20th day of April, 1917.

WM. H. SAWTELLE,
Judge of the United States District Court for the
District of Arizona. [130].

[Endorsements]: No. ——. In the United States District Court in and for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt. J. B. Long, J. W. Long, Margaret M. Long and M. West, Respondents. Order Under Rule 16, Section 1, Enlarging Time to File Transcript of Record and Docket Cause. Filed April 20th, 1917. Mose Drachman, Clerk. Struckmeyer & Jenckes, Attorneys for Respondents. [131]

*In the District Court of the United States in and for
the District of Arizona.*

In the Matter of PHOENIX HARDWARE COM-
PANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

Praeceptum for Transcript of Record.

To the Clerk of the United States District Court for
the State of Arizona:

You will please prepare a transcript of the record
in the above-entitled cause to be filed in the office of
the Clerk of the United States Circuit Court of Ap-
peals for the Ninth Judicial Circuit, under the ap-
peal to be perfected to said Court in said cause, and
include in said transcript the following proceedings,
pleadings, papers, records and files, to wit:

Petition of C. B. Christy for an order directing trustee to make assessment.

Reply of respondents to petition of C. B. Christy.

Findings of fact and order of Referee directing trustee to make assessment.

Reporter's transcript of testimony and proceedings before Referee in Bankruptcy.

Petition for review of order of Referee.

Order affirming order and decree of Referee as amended.

Notice of appeal.

Petition for an order allowing appeal.

Assignment of errors.

Order allowing appeal and fixing bond.

Bond on appeal.

Citation.

Praeceptum for transcript.

Trustee's Exhibits 1, 2, 4, filed in hearing before
Referee.

W. J. KINGSBURY,
JOSEPH S. JENCKES,
Attorneys for Respondents. [132]

[Endorsements]: In the District Court of the United States in and for the District of Arizona. In the Matter of the Phoenix Hardware Company, Bankrupt. J. B. Long, J. W. Long, Margaret M. Long and M. West, Respondents. Praeceptum for Transcript of Record. Struckmeyer & Jenckes, Attorneys for Respondents. Filed May 12, 1917, at — M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [133]

*In the District Court of the United States for the
District of Arizona.*

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Appellants,

vs.

CHARLES B. CHRISTY, as Trustee in Bankruptcy of the Estate of PHOENIX HARDWARE COMPANY, a Corporation, Bankrupt,

Appellee.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS: That we, J. B. Long, J. W. Long, Margaret M. Long and M. West, as principals, and Harry Lukin and W. Lukin, as sureties, are held and firmly bound unto Charles B. Christy, as trustee in bankruptcy of the estate of Phoenix Hardware Company, a corporation, bankrupt, appellee, and to his successor or successors in said trust, in the full sum of Five Hundred (\$500) Dollars, said sum being the amount of the bond fixed by the District Court of the United States for the District of Arizona, by order duly entered on the records of said Court on April 3d, 1917, to be paid to the said Charles B. Christy, appellee, or to his successor or successors in said trust, to which payment well and truly to be made we bind ourselves, and our and each of our heirs, executors, administrators and legal representatives jointly and severally by these presents.

Sealed with our seals and dated this 25 day of April, in the year of our Lord, 1917.

The condition of the above obligation is such that, WHEREAS, on the 2d day of March, 1917, at the District Court of the United States for the District of Arizona, in a certain [134] controversy in bankruptcy then pending in said court, wherein the appellee, Charles B. Christy, as trustee in bankruptcy of the estate of Phoenix Hardware Company, a corporation, bankrupt, was petitioner, and appellants, J. B. Long, J. W. Long, Margaret M. Long and M. West, were respondents, a judgment was rendered in favor of the said petitioner and against J. B.

Long, J. W. Long, Margaret M. Long, and M. West, respondents, affirming four certain orders and decrees of the Referee in Bankruptcy of said Court, each dated March 15th, 1916, levying an assessment of thirty-three per cent (33%) on each share of the capital stock of said Phoenix Hardware Company, bankrupt, owned and held by each of said respondents, and ordering the payment thereof; and

WHEREAS, the said J. B. Long, J. W. Long, Margaret M. Long and M. West, respondents, have appealed from said judgment which said appeal has been allowed by said District Court of the United States for the District of Arizona, and has obtained from said Court a citation directed to the said Charles B. Christy, trustee, citing and admonishing him to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, State of California;

NOW, THEREFORE, if the said J. B. Long, J. W. Long, Margaret M. Long and M. West shall prosecute their said appeal to effect and answer all costs, if they fail to make said plea good, then the above obligation to be void; otherwise to remain in full force and effect.

J. B. LONG,
Principal.

J. W. LONG,
Principal.

MARGARET M. LONG,
Principal.

W. WEST,
Principal.

HARRY LUKIN,
Surety.

W. LUKIN,
Surety.

The above and foregoing bond approved this — day of April, 1917.

Clerk. [135]

State of Arizona,
County of Maricopa,—ss.

W. Lukin and Harry Lukin, whose names are subscribed to the within bond, being severally duly sworn, each for himself, deposes and says: That he is a resident and householder within the County of Maricopa, State of Arizona; that he is worth the sum of Five Hundred and no/100 Dollars (\$500) over and above all his just debts and liabilities, and over and above all property exempt from execution and forced sale.

[Seal]

W. LUKIN.
HARRY LUKIN.

Subscribed and sworn to before me this 23 day of April, A. D. 1917.

T. W. KINGSBURY,
Notary Public.

Com. expires Feb. 16, 1920. [136]

[Endorsements]: In the District Court of the United States for the District of Arizona. J. B. Long, J. W. Long, Margaret M. Long and M. West, Appellants, vs. Charles B. Christy, as Trustee in Bankruptcy of the Estate of Phoenix Hardware Company, a Corporation, Bankrupt, Appellee. Bond. Filed May 23, 1917. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [137]

*In the United States District Court for the District
of Arizona.*

No. B-101 (Phoenix).

In the Matter of the PHOENIX HARDWARE
COMPANY, a Bankrupt.

**Order Under Rule 16, Section 1, Enlarging Time to
June 15, 1917, to File Record Thereof and to
Docket Cause.**

Upon consideration of the application of Mr. Mose Drachman, the Clerk of the United States District Court for the District of Arizona, and good cause therefor appearing,—

IT IS ORDERED that the time within which the original certified Transcript of the Record in the above-entitled cause may be filed, and within which the cause may be docketed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be and hereby is enlarged to and including the 15th day of June, A. D. 1917.

Dated May 31st, 1917.

WM. H. SAWTELLE,

Judge of the United States District Court for the
District of Arizona.

[Endorsements]: No. B-101 (Phoenix). United States District Court, District of Arizona. In the Matter of the Phoenix Hardware Co., Bankrupt. Order Extending Time Within which to File and Docket Transcript of Record on Appeal. Filed May

31st, 1917, at — M. Mose Drachman, Clerk. By
R. E. L. Webb, Deputy. [138]

*In the United States District Court for the District
of Arizona.*

No. B-101 (Phoenix).

In the Matter of the PHOENIX HARDWARE
COMPANY,

Bankrupt.

**Certificate of Clerk of United States District Court
to Transcript of Record.**

United States of America,
District of Arizona,—ss.

I, Mose Drachman, Clerk of the United States District Court for the District of Arizona, do hereby certify the 150 typewritten pages, numbered from 1 to 150, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause, and it is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitutes the record on appeal from the judgment of said United States District Court for the District of Arizona, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on be-

half of the respondents for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:
[139]

| | |
|--|---------|
| Clerk's fee (Sec. 828, R. S. U. S. as amended by Sec. 6, Act of March 2, 1905), for making typewritten transcript of record—414 folios at 20¢ per folio..... | \$82.80 |
| Certificate of Clerk to typewritten transcript of record, 4 folios at 30¢ per folio..... | 1.20 |
| Seal to said Certificate..... | .40 |
| | <hr/> |
| | \$84.40 |

I hereby certify that the above cost for preparing and certifying record, amounting to \$84.40, has been paid to me by Joseph S. Jenckes, one of counsel for the respondents herein.

I further certify that I hereto attach and herewith transmit the original Citation in this cause.

WITNESS my hand and the Seal of said District Court affixed this 12th day of June, A. D. 1917, at Phoenix, Arizona.

[Seal]

MOSE DRACHMAN,

Clerk.

By Edith A. Webb,

Deputy. [140]

*In the District Court of the United States, in and for
the Distirct of Arizona.*

In the Matter of PHOENIX HARDWARE
COMPANY,

Bankrupt.

J. B. LONG, J. W. LONG, MARGARET M. LONG
and M. WEST,

Respondents.

Citation on Appeal.

President of the United States of America to
Charles B. Christy, Trustee of the Estate of
Phoenix Hardware Company, a Corporation,
Bankrupt:

You are hereby notified that in a certain matter in
bankruptcy in the United States District Court in
and for the District of Arizona, wherein Charles B.
Christy, as trustee of the estate of Phoenix Hardware
Company, a corporation, bankrupt, is petitioner, and
J. B. Long, J. W. Long, Margaret M. Long, and M.
West, are respondents, an appeal has been duly al-
lowed to said J. B. Long, J. W. Long, Margaret M.
Long and M. West, respondents, to the United States
Circuit Court of Appeals in and for the Ninth Ju-
dicial Circuit. You and each of you are hereby cited
and admonished to be and appear in the said Court
at the City of San Francisco, State of California,
within thirty days from the date of this citation, to
show cause, if any there be, why the order of March
2, 1917, affirming the four orders and decrees of the

Referee of said Court, each dated March 15, 1916, levying an assessment of thirty-three per cent on each share of the capital stock of said bankrupt owned and held by each of said respondents, and ordering the payment thereof, which [141] said order is appealed from herein, should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. SAWTELLE, Judge of the United States District Court in and for the District of Arizona, this 3d day of April, 1917.

WM. H. SAWTELLE,
Judge of the United States District Court for the
District of Arizona.

Service of the foregoing citation is acknowledged and accepted this 3d day of April, 1917.

J. C. FOREST,
Solicitor for Trustee in Bankruptcy of the Estate of
Phoenix Hardware Co., a Corporation, Bank-
rupt. [142]

[Endorsed]: No. B-101. In the United States District Court, in and for the District of Arizona. In the Matter of Phoenix Hardware Company, Bankrupt. J. B. Long, J. W. Long, Margaret M. Long, and M. West, Respondents. Citation. Filed Apr. 3, 1917, at — M. Mose Drachman, Clerk. By R. E. L. Webb, Deputy. [143]

[Endorsed]: No. 3011. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of the Phoenix Hardware Company, a Cor-

poration, Bankrupt. J. B. Long, J. W. Long, Margaret M. Long and M. West, Appellants, vs. Charles B. Christy, as Trustee of the Estate of Phoenix Hardware Company, a Corporation, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed June 15, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.